



Australian Government

MEETING THE DIGITAL CHALLENGE
Reforming Australia's media in the digital age

DISCUSSION PAPER ON MEDIA REFORM OPTIONS

March 2006

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Purpose

This paper presents a series of options in the form of a proposed framework to address issues relating to digital broadcasting, in conjunction with the Australian Government's longstanding policy of reform of Australia's media ownership laws.

This paper continues a consultation process on media reforms and follows a number of legislated reviews into the digital television regime. It draws together options for potential policy responses relating to the media industry and proposes a comprehensive framework for media reform in Australia.

As part of the consultation process, public comment is invited on the options proposed in the framework.

INTRODUCTION – OPTIONS FOR A CO-ORDINATED STRATEGY FOR MEDIA

The challenge of the current environment

Traditional media services are being challenged by new digital technologies resulting in the emergence of new players, content, services and delivery platforms. For consumers, this means an ever-increasing number of new sources of information and entertainment. For the media sector, while it poses challenges as audiences are attracted away from traditional media sources, it also presents significant opportunities to embrace new ways of doing business. From the Government's perspective, the impact of digital technologies means the current regulatory settings, which are largely designed for an analogue world, require review.

In order to ensure the quality and diversity of services delivered to consumers, media policy has traditionally closely controlled who may enter the market and what services they may offer. The current, 'analogue' approach to media regulation, enshrined in the *Broadcasting Services Act 1992* (BSA), is based on regulatory distinctions between different types of broadcasting. Digital technology enables new services to be offered and opportunities for additional sources of content for audiences from both new and existing players. In a converged environment, it will become increasingly difficult to regulate the emergence of new players and new services.

Digital technologies blur the lines between the traditionally distinct telecommunications, broadcasting, print and IT sectors as they deliver an increasingly common range of services.

This shift has substantially impacted not only upon entertainment services, but also on sources of news, public opinion and information. For instance, use of internet-based news media has been growing rapidly. While many popular news sites are provided by traditional media companies, the emergence of weblogging, news via mobile phones and independent online news services means news and current affairs reporting has become more interactive.

These developments mean that it is now necessary to consider models which move away from controlling market structures in the way successive Governments have to date and to consider a new media regulatory framework that allows for some efficiencies of scale and scope for existing industry players while encouraging new entrants, new investment and new services to contribute to diversity in a competitive environment.

Media ownership regulation is intended to ensure ownership diversity of the most influential and ubiquitous media platforms which operate within the Broadcasting Services Band (BSB) spectrum (namely, free-to-air (FTA) television and radio), and newspapers. In reviewing its approach to media ownership reform, the Government considers that media diversity will be best served by clear protection against excessive ownership concentration among traditional media outlets, combined with market entry opportunities and regulatory barriers that allow for new platforms and services, that will assist in delivering a competitive sector providing diversity and choice for consumers.

The Government committed at the last election to reforming Australia's media ownership laws in the interests of commercial flexibility and new investment while protecting the public interest in diversity. Developments with digital technology, particularly the convergence of television, telecommunications and the internet, make it difficult to consider a framework for media ownership reform and changes to the digital broadcasting regime in isolation.

Changes scheduled to occur without Government intervention

The digital television conversion policy framework enacted in 1998 and 2000 was designed to provide for the conversion from analogue to digital broadcasting. The current policy settings were envisaged as transitional arrangements to assist industry in making the necessary investment in digital infrastructure and to encourage consumers to switch over to digital.¹

Consistent with the transitional nature of the framework, a number of legislative provisions have end-dates in the near future:

- The moratorium on allocating new commercial television broadcasting licences expires on 31 December 2006. From this date, if changes are not made to the current legislative arrangements, the regulator, the Australian Communications and Media Authority (ACMA), will have the capacity to allocate new FTA commercial television licences in the BSB spectrum.
- The moratorium on the allocation of new commercial FTA TV licences for services delivered over other platforms such as wireless, satellite and cable

¹ The BSA defines the 'simulcast period', during which FTA television broadcasters must provide their services in both analogue and digital mode. A range of transitional regulatory measures relating to the introduction of digital television apply during this period which will cease to have effect once the simulcast period ends. The end of the simulcast period is the point at which analogue television services are switched off in a licence area, leaving only the digital television signal. This point is referred to in this paper as 'analogue switchover'.

broadband networks will also end on that date.

- In addition, from 1 January 2007, the restrictions on the services that apply to a holder of a datacasting transmitter licence will be substantially lifted, enabling an expanded range of services such as subscription-TV and niche (narrowcast) FTA channels, including for mobile television receivers, to be delivered over the spectrum channels currently set aside for datacasting.

These changes will take effect automatically unless amendments to the legislation are made. Consistent with its election commitment, the Government will amend the relevant legislation so that the decision about whether to allocate new FTA commercial television licences is a matter for the government of the day, rather than ACMA.

The automatic changes to the regulatory framework will not affect existing cross-media and foreign ownership restrictions, restrictions on multi-channelling, the anti-siphoning regime, high definition television quotas or the December 2008 date for analogue switchover.

They will, however, provide opportunities for the emergence of new and innovative digital services that will add to the choices available to consumers and, in conjunction with the Digital Action Plan discussed below, will contribute to moving Australia along the path of embracing a competitive digital marketplace. The Government does not propose to prevent these automatic changes taking effect, other than the change in relation to FTA commercial television licences outlined above.

Moving to analogue switchover - the Digital Action Plan

The emerging and fast-paced digital world has created an opportunity for the Government to review the regulatory settings to ensure that Australia is well placed to take advantage of digital innovation. More efficient digital broadcasting technology will ultimately allow better and improved use of spectrum and opportunities for new services.

A fundamental plank in achieving a digitally capable nation is turning off the analogue TV signal. The transition of television broadcasting to digital services started in Australia in 2001. Primarily using a market driven mechanism, the take-up of FTA digital TV has not progressed at a level or pace to allow the switchover to commence in 2008 as originally planned.

Developments in Australia and across the world favour the Government, in consultation with industry, taking a proactive approach to moving Australia to a fully digital TV environment by encouraging take-up of digital services, removing barriers to adoption of digital TV and putting in place mechanisms to expedite analogue switchover in the near future.

Preparation and management of analogue switchover will be a challenging and substantial task, involving careful planning, and coordination of the efforts of the Government, ACMA, broadcasters, manufacturers, retailers and others. Options outlined in this paper would contribute to this process.

Consultation

The Government is seeking comment on options outlined in this paper. The paper is the culmination of a number of legislated reviews into digital television. It draws together policy issues relating to the media industry and presents a series of options in the form of a proposed framework for media reform in Australia.

Following consideration of submissions, the Government will finalise its policy on media reform issues and develop and put in place a Digital Action Plan, with a strong focus on driving take-up and conversion to digital. Legislative measures to give effect to the settled policy framework will be implemented as soon as practicable.

SUBMISSIONS

Submissions are invited from interested parties on the options and issues contained in this paper.

Submissions should be provided by 18 April 2006, and should be addressed to:

The General Manager
Digital Broadcasting and Spectrum Management
Department of Communications, Information Technology and the Arts
GPO Box 2154
CANBERRA ACT 2601

Submissions may be provided electronically, preferably in a format compatible with Microsoft Word 2003, and should be emailed to trish.barnes@dcita.gov.au. Further information can be obtained from Simon Pelling at simon.pelling@dcita.gov.au or telephone 02 6271 1763, facsimile 02 6271 1717. Media inquiries should be directed to Jane McMillan, Office of the Minister for Communications, Information Technology and the Arts on 02 9223 4388.

Submissions will be made public on the Department's website unless otherwise specified. Persons providing a submission should indicate clearly whether any aspect of the submission should not be made public. Where confidentiality is requested, submitters are encouraged to provide a public version of submissions that can be made available on the Department's website.

While views presented in submissions received after 18 April 2006 will be considered where possible, the Government's intention to finalise its policies in early 2006 will mean that there will be limited scope to consider views in submissions lodged late.

KEY PROPOSALS

PART 1 - A ROADMAP TO DIGITAL CONVERSION

Digital Action Plan

The Government proposes to develop a Digital Action Plan in partnership with stakeholders to expedite digital conversion, bring the simulcast period to an end and achieve analogue switchover.

The Digital Action Plan would be released in 2006.

The proposed Digital Action Plan would contain:

- i) a roadmap to guide the process and a time frame for the closure of analogue television services in Australia;
- ii) measures aimed at providing appropriate incentives to broadcasters, receiver manufacturers/importers and others to move to digital television;
- iii) appropriate incentives and potential assistance that may be required for consumers to move to digital television; and
- iv) the roles that various stakeholders and agencies would play in working together to achieve switchover, including the potential formation of a dedicated new organisation to oversee and co-ordinate the activities necessary to achieve analogue switchover.

The Digital Action Plan would recognise the different requirements for achieving analogue switchover in metropolitan and regional areas nationally.

It is proposed that the Digital Action Plan aim for an analogue switchover period commencing in 2010 to 2012, consistent with the targets set in many other industrialised nations and subject to the development of the roadmap.

PART 2 - ENABLING A DIGITAL ENVIRONMENT

2.1 NEW SERVICES ON SPARE SPECTRUM AND OTHER PLATFORMS

Fourth network moratorium

Preferred options:

- i) The moratorium on new commercial television licences, which expires on 31 December 2006, would not be extended.
- ii) The Government will legislate to transfer the decision-making power for the allocation of new commercial FTA television licences from ACMA to the Government, consistent with its election commitment.

- iii) No new licences for commercial FTA services in BSB spectrum will be allocated at the conclusion of the moratorium.
- iv) Prior to the end of the simulcast period and in accordance with the Digital Action Plan, the Government will review whether additional FTA commercial television licences should be allocated using BSB spectrum. It is not envisaged that any new licences would be allocated prior to the end of the simulcast period.

New digital services on broadcasting spectrum

Preferred options:

- i) Two reserved digital channels of terrestrial spectrum would be allocated as soon as practicable in 2007 in markets for new digital services.
- ii) From 1 January 2007, subject to licence requirements, options for these services may include subscription TV services, FTA niche 'narrowcasting' services, as well as interactive and short video or 'datacasting' services, whether delivered to fixed or mobile television receivers. They would not include a new FTA commercial television service.
- iii) This would provide opportunities for new innovative digital service options of interest and value to consumers, rather than services that mirror traditional television services.
- iv) Commercial and national broadcasters would continue to be permitted to provide datacasting services on their existing digital spectrum.
- v) The current prohibition on commercial and national broadcasters being able to control datacasting transmitter licences would be retained.
- vi) The Government would consider what, if any, obligations or restrictions should be placed on operators of these new digital services and the manner in which the channels should be allocated. In doing so, the Government would have regard to the obligations and restrictions currently applying to FTA and subscription broadcasters.

New services on other platforms

Preferred options:

- i) The Government will legislate to transfer the decision-making power for the allocation of new commercial FTA television licences delivered outside BSB spectrum (such as wireless, satellite and broadband services) from ACMA to the Government.
- ii) In considering applications for such licences after 31 December 2006 the Government will consider whether allocation is in the public interest. The process for allocating such licences will be considered further.

- iii) Commercial FTA broadcasting services operating outside the BSB spectrum would be exempted from the media ownership and control provisions of the *Broadcasting Services Act 1992*, at the same time as commercial BSB broadcasting services and newspapers are exempted.
- iv) Commercial FTA broadcasting services operating outside the BSB spectrum would remain subject to general competition law and the *Foreign Investment Policy* provisions relating to ‘sensitive sectors’ including the media.
- v) The *Broadcasting Services Act 1992* would be amended to provide that the acquisition of rights to an event on the anti-siphoning list by a commercial FTA broadcaster operating outside the BSB would not satisfy the requirement that before a subscription TV licensee could acquire rights, a national or commercial FTA broadcaster must have acquired the rights or the event has been delisted.

2.2 EXPANDING SERVICE OPTIONS FOR EXISTING FTA BROADCASTERS

Consequences of analogue switchover

- i) Analogue switchover and the end of the simulcast period would provide a natural point, from both a practical and policy perspective, for further changes to the digital television regime.

Multichannelling

Commercial broadcasters

Preferred options:

- i) The current restrictions on commercial television broadcaster full multichannelling would be removed at the end of the simulcast period, consistent with the transitional nature of the current policy settings and the Digital Action Plan.
- ii) The Government is prepared to reconsider the timing for relaxation of the restrictions on full multichannelling should there be any significant changes in the lead up to analogue switchover which alters the balance in favour of an earlier adjustment.
- iii) Arrangements for the regulation of multichannels by commercial FTA broadcasters, including, for example, appropriate Australian content rules and captioning obligations, would be considered prior to the end of the restrictions on commercial television broadcaster multichannelling. In considering such arrangements, the Government would have regard to the

obligations applying to other digital services.

- iv) In the event the restrictions on commercial broadcaster multichannelling are removed prior to the end of the simulcast period, to maintain the integrity of the anti-siphoning scheme, commercial broadcasters would be prohibited from televising sport on the anti-siphoning list on any new digital channel unless the sporting event has already been shown (or is simultaneously shown) on the main service.
- v) Prior to the expiry of the anti-siphoning list on 31 December 2010 and the end of the simulcast period, the Government would review the ongoing rationale for the anti-siphoning scheme including the restriction on commercial broadcasters televising sport as set out in paragraph (iv) above.

National broadcasters

Preferred options:

- i) The genre restrictions on national broadcaster multichannelling would be removed as soon as practicable, upon passage of the necessary legislation.
- ii) The Government would continue to monitor the issue of local content levels on the national broadcasters.
- iii) To maintain the integrity of the anti-siphoning scheme, the national broadcasters would be prohibited from televising sport on the anti-siphoning list on any new digital channel unless the sporting event has already been shown (or is simultaneously shown) on the main service.
- iv) Prior to the expiry of the anti-siphoning list on 31 December 2010 and the end of the simulcast period, the Government would review the ongoing rationale for the anti-siphoning scheme including the restriction on the national broadcasters televising sport as set out in paragraph (iii) above.

High Definition television

Preferred options:

- i) The current HDTV quota of 1040 hours per year would be retained until the end of the simulcast period, consistent with the transitional nature of the current policy settings and the Digital Action Plan.
- ii) As an interim measure, from 1 January 2007, the Government could remove the requirement that the HDTV version of a digital television service be a simulcast of the SDTV service. This option would effectively allow FTA TV broadcasters to run one multichannel in HDTV in advance of switch-off.
- iii) To maintain the integrity of the anti-siphoning scheme, broadcasters would be prohibited from televising sport on the anti-siphoning list on any non-

simulcast HDTV channel unless the sporting event has already been shown (or is simultaneously shown) on the SDTV service.

- iv) In the event the Government does not implement the option in (ii) above, regional broadcasters would be permitted to provide a single HDTV service throughout their licence area without the requirement for multiple local break-outs.

Anti-Siphoning

Preferred options:

- i) Commencing 1 January 2007, a “use it or lose it” scheme would be introduced for events on the anti-siphoning list, based on the results of ACMA’s first year of monitoring.
- ii) The scheme would identify criteria against which “use” of an event by a FTA broadcaster could be measured and, if the event is not “used”, it may be removed from the anti-siphoning list.
- iii) Ministerial discretion would be retained in respect of any decision to remove events from the anti-siphoning list.
- iv) The ongoing rationale of the anti-siphoning scheme and the extent to which it is meeting its objectives, would be reviewed in 2009, prior to the new list expiring on 31 December 2010 and in the context of the end of the simulcast period. This review would also consider the restriction on commercial and national broadcasters televising sport on the anti-siphoning list on any new digital channel.
- v) The Government would continue to monitor the matter identified by FTA broadcasters as the “loophole” in the anti-siphoning regime.

2.3 MEDIA OWNERSHIP AND CONTROL

Foreign ownership

Preferred options:

- i) The current media-specific foreign ownership rules in the *Broadcasting Services Act 1992* would be removed.
- ii) The current newspaper-specific foreign ownership restrictions in the *Foreign Investment Policy* under *Foreign Acquisitions and Takeovers Act 1975* would be removed.
- iii) The media would be retained as a ‘sensitive sector’ under the *Foreign Investment Policy*.

- iv) Proposals by foreign interests to directly invest in the media sector, irrespective of size, would remain subject to prior approval by the Treasurer.

Cross-media transactions

Preferred options:

- i) The cross-media rules would be amended to allow cross-media transactions to proceed, subject to there remaining a minimum number of commercial media groups in the relevant market (four in regional markets, five in mainland state capitals).
- ii) Existing limits on broadcasting licences would be retained: a maximum of two commercial radio licences in a radio licence area; one television licence in a licence area, and no more than 75 per cent national television reach.
- iii) Public disclosure would be required when a media outlet reports on the activities of a cross held entity.

Regional services protections

Preferred options:

- i) A legislated requirement would be established for the continued imposition of licence conditions in key regional commercial television markets to provide minimum levels of content on matters of local significance.
- ii) ACMA would continue to ensure there is genuine competition between regional radio licensees through the requirement that, following the sale of a commercial radio licence, if the program format of that service changes from one of broad appeal to one of more limited appeal, it considers the allocation of a new commercial radio broadcasting licence in that licence area.
- iii) ACMA and the Government would continue to monitor the provision of local content in other television licence areas and on regional commercial radio services. The Government may consider extending licence conditions relating to levels of local content to those markets if local content levels decline materially.

Regulators' role

Australian Competition and Consumer Commission

Preferred options:

- i) Media mergers would continue to be subject to the general mergers provisions of the *Trade Practices Act 1974*.
- ii) The ACCC would assess the competitive impacts of transactions, in accordance with the requirements of the *Trade Practices Act 1974*.

Australian Communications and Media Authority

Preferred options:

- i) ACMA would oversee the operation of the *Broadcasting Services Act 1992* in relation to media transactions to ensure they comply with the 'minimum number of media groups' requirement and the licence and reach limits.
- ii) ACMA's enforcement powers under the *Broadcasting Services Act 1992* would be enhanced to enable it to make more timely and proportionate responses to industry activity.

Timing

Preferred options:

- i) Media ownership reforms could take effect following automatic changes to the regulatory framework in 2007 that would also allow new licences for digital services on reserved spectrum to be allocated.
- ii) Alternatively, media ownership reforms could be linked with the end of the simulcast period, in line with the Digital Action Plan.

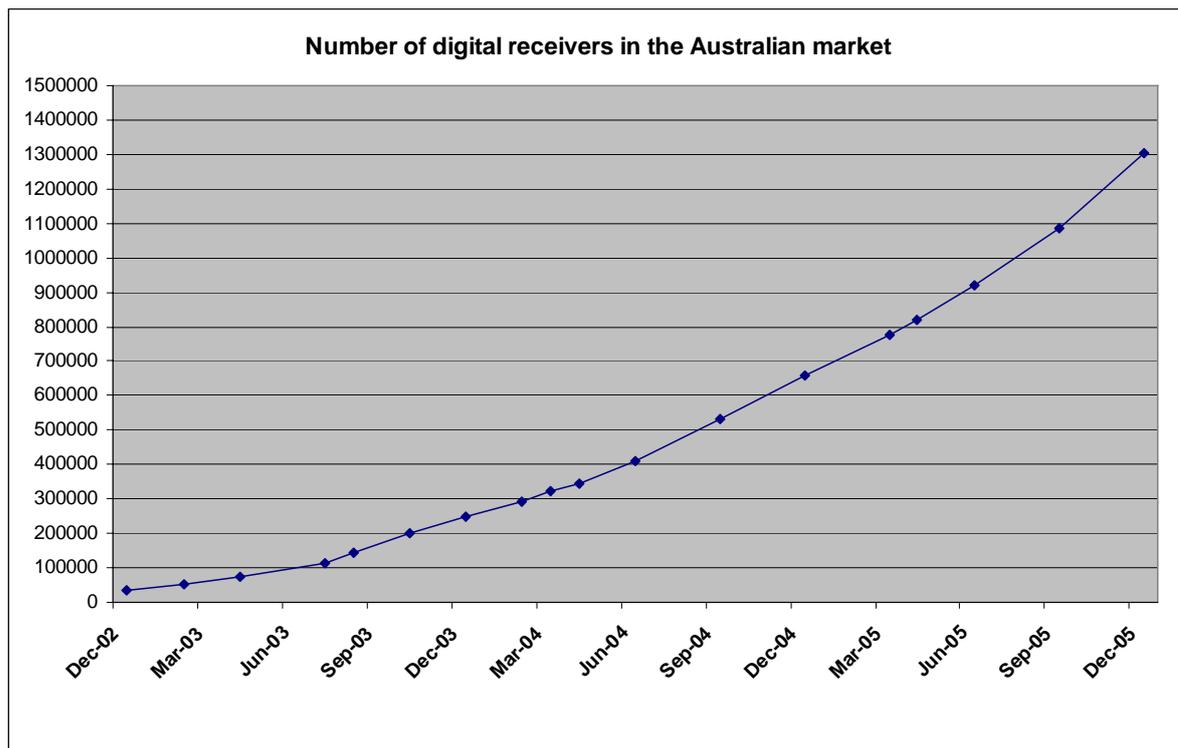
DETAIL OF PROPOSED REFORM OPTIONS

PART 1 – A ROAD MAP TO DIGITAL CONVERSION

There are sound policy reasons for Australia to reach a point where analogue television signals can be switched off as soon as possible. Developments both in Australia and around the world support the Government taking a proactive and coordinated approach, in consultation with industry, to driving digital take up so that analogue switchover can be achieved expeditiously. Australia cannot remain in an analogue world while other comparable countries make a permanent switch to digital. Increased demands for spectrum and the expense of simulcasting for both Government and industry, also mean Australia cannot continue indefinitely with a dual analogue/digital system.

Other countries are moving rapidly to analogue switchover and the period 2010 to 2012 is increasingly being identified as a common switchover target. In Germany the world's first complete digital switchover occurred in the Berlin-Brandenburg region in August 2003. Each region is undertaking digital conversion independently and Germany has set 2010 as a goal for the national analogue switch-off. The UK Government recently confirmed that analogue switchover will occur between 2008 and 2012 on a commercial television market by market basis. France aims to complete analogue switchover by 2010 or 2011. Austria, Spain, Finland, Italy, Malta and Sweden intend to complete analogue switchover by 2010. Belgium, Greece, Slovenia, Slovakia and Hungary have declared 2012 as a target for switchover. The European Commissioner for Information Society and Media has called for all member states to set 2012 as a deadline for switchover. The US has selected a firm date for analogue switchover of 17 February 2009 for full power television stations. Japan has set 2011 as a target for completing analogue switchover.

Australia can benefit from international experience and implement a strategy now to expedite the processes to drive digital take-up to achieve switchover. Already, according to industry information, by 31 December 2005 suppliers had sold 1,304,000 free to air digital television receivers to retailers. The graph below shows the steady increase in take-up of digital television since its introduction.



Source: Digital Broadcasting Australia

However, it is estimated² that only around 15.5 per cent of Australian homes had FTA digital television capability as at 31 December 2005. If households with digital pay television are taken into account, this figure could rise to around 27.5 per cent. This means that a significant proportion of homes are yet to convert. It is worth noting that some areas of Australia are quicker to convert than others. For instance, in Tasmania, a market with only two analogue commercial services, the introduction of a third, digital-only service has led to a greater level of take-up, with Hobart estimated to have more than 25 per cent digital FTA take-up by the first quarter of 2005.

Since the introduction of digital television, significant progress has been made in rolling out digital transmission infrastructure in Australia. More than 95 per cent of the population has access to at least one FTA broadcaster service in digital mode, with more than 85 per cent of the population having access to all broadcasters in their area in digital mode.

Continuing a dual transmission system for simulcasting, involving both digital and analogue transmission infrastructure, is expensive for both broadcasters and for the Government. For example, analogue transmission costs for the national broadcasters (ABC and SBS) are currently around \$50 million per year, and the current cost to the Government of supporting regional broadcasters with their digital rollout through the Regional Equalisation Plan is around \$25 million per year.

In addition, analogue switchover will release a large amount of spectrum in the currently congested BSB. The scope for switchover to free up substantial parts of the UHF television spectrum for alternative or supplementary uses has been a key element of the digital conversion debate in the United States, the United Kingdom and

² Source: DBA Information Bulletin February-March 2006.

the EU. Spectrum is a scarce and valuable resource. There is value to the Government in the potential revenue raised from the sale or lease of additional spectrum, and in being able to achieve a range of public policy objectives that increased availability of spectrum can provide. Equally, there is value to industry and consumers in the use of additional spectrum to provide new services.

A clear switchover plan and end date target is important for industry. Broadcasters have already converted their operations to digital, and are having to convert digital broadcast streams to analogue for analogue transmission. Many broadcasters also face decisions in the near future about renewing ageing analogue infrastructure. As overseas markets go digital, analogue transmission equipment and programming will become more difficult and expensive to obtain.

Australia is a small market for consumer electronics equipment, with a low manufacturing base in audio-visual products, and therefore follows other markets in terms of the range and types of consumer equipment available. As other, larger markets such as the US, Europe and major Asian countries switch to digital, analogue consumer equipment will become increasingly difficult to source in Australia. In the global economy for television equipment and content, Australia cannot afford to be left behind in an analogue enclave.

The proposed initiatives set out in this document are the evolution of a process that started with the introduction of digital television in 2001. Building on the automatic changes that will take place to the regulatory framework as of 1 January 2007, the Government proposes to develop a Digital Action Plan to be released in 2006. It is proposed that the Digital Action Plan would contain:

- a roadmap to guide the process and a time frame for the closure of analogue television services in Australia;
- measures aimed at providing appropriate incentives to broadcasters, receiver manufacturers/importers and others to move to digital television;
- appropriate incentives and potential assistance that may be required for consumers to move to digital television; and
- the roles that various stakeholders and agencies would play in working together to achieve switchover, including the potential formation of a dedicated new organisation to oversee and co-ordinate the activities necessary to achieve analogue switchover.

The Digital Action Plan would recognise the different requirements for achieving analogue switchover in metropolitan and regional areas nationally. It would aim for an analogue switchover period commencing in 2010 to 2012, consistent with the targets set in many other industrialised nations.

The Government has already consulted on a range of issues related to the Digital Action Plan in the *Review of the Duration of the Simulcast Period*. In addition, the House of Representatives Standing Committee on Communications, Information Technology and the Arts has recently reported on its inquiry into the uptake of digital

television in Australia. The report can be found on the Committee's website at <http://www.aph.gov.au/house/committee/cita/digitaltv/report.htm>.

For the purposes of this discussion paper, the Digital Action Plan could be expected to address the types of issues discussed below.

The timetable and plan for switchover

Based on current digital television take-up rates, the analogue switchover date set for the end of 2008 is unlikely to be achieved. A purely market-driven approach and the retention of the transitional settings is unlikely to be sufficient to enable Australia to reach analogue switchover in the foreseeable future. Following the legislated review into the length of the analogue/digital simulcast period in 2005, the Government is considering resetting the analogue switchover date to 2010 to 2012 and whether targets such as take-up rates should guide the switchover strategy and timeframe. In addition, a strategy for managing the switchover, possibly region by region, will be developed.

The following matters are under consideration:

- assuming the analogue switchover date is extended, resetting the date for the switchover to commence in 2010 to 2012 to coincide with many other industrialised nations;
- triggers or targets which may be adopted when setting the switchover timetable;
- how switchover should be implemented to occur in all markets nationwide; region by region based on the length of time since digitisation (as with the present arrangement) or in some other configuration; and
- whether there is scope to shorten the simulcast period for regional broadcasters or to allow regional licensees to voluntarily cease analogue broadcasting earlier than any mandated switchover date.

Completing digital roll-out

Although digital roll-out is well advanced, and now includes all major regional centres, considerable progress still needs to be made in order to ensure that all the transmitters required to fully match analogue coverage have been rolled out.

How the significant number of self-help analogue transmission facilities are to operate in a digital environment will also need to be considered. These are facilities installed, owned and operated by communities to provide television services, generally in areas not covered by transmitters owned by local commercial services, or in analogue 'black spots'.

In addition, the Government has yet to finalise conversion strategies for community television broadcasters, and the very small number of television 'narrowcasters' (such as tourist information channels available in some towns).

The Digital Action Plan would provide an opportunity for the Government to consider the basis upon which conversion of these services can occur.

Technical, regulatory and other measures to encourage consumer take up and the vacation of analogue spectrum

A number of possible measures to expedite and drive analogue switchover, as identified in the review of the simulcast period, are under consideration. These include:

- campaigns to promote awareness of the availability and benefits of digital television and the conversion process, together with targeted information for consumers;
- measures to educate consumers and property owners about reception requirements, including antenna requirements for households, and conversion of television reticulation systems in multi-unit dwellings;
- consideration of financial assistance for disadvantaged people, or the elderly, or possible subsidisation of digital receivers to facilitate conversion;
- compulsory labelling requirements for analogue equipment, which indicates that it will have a limited range of functions after switchover;
- a requirement for all, or certain types, of receiver equipment to be made available with digital tuners;
- measures to address technical and standards issues, such as provision of a testing and conformance facility for manufacturers and importers to assess the compliance of digital receivers with Australian standards; and
- encouraging broadcasters to expedite conversion by imposing obligations to ensure timeframes for switchover are met.

The Government has not yet reached a concluded view on whether any or all of these measures should form part of the proposed Digital Action Plan.

However, the Government recognises that full conversion of television to digital will be a substantial task requiring commitment, energy and resources from Government and industry, including broadcasters, equipment manufacturers and retailers, and other stakeholders. As part of the proposed Digital Action Plan, the Government is considering options for fostering cooperative approaches between stakeholder groups, to help achieve a sense of common purpose and direction and reach agreement on the nature and scope of contributions of those groups. It is examining the roles currently undertaken by existing agencies and bodies and whether these roles should be changed or whether new bodies, such as the switchover organisation established in the UK, SwitchCo, should be established to oversee and co-ordinate the activities necessary to achieve analogue switchover.

It is proposed that the Government would release a Digital Action Plan during 2006.

PART 1 - A ROADMAP TO DIGITAL CONVERSION

The Australian Government proposes:

a) Digital Action Plan

The Government would develop a Digital Action Plan in partnership with stakeholders to expedite digital conversion, bring the simulcast period to an end and achieve analogue switchover.

The Digital Action Plan would be released in 2006.

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PART 2 – ENABLING A DIGITAL ENVIRONMENT

2.1) NEW SERVICES ON SPARE SPECTRUM AND OTHER PLATFORMS

Until analogue television services cease, there are only two unallocated digital channels in the BSB available in most licence areas. In planning for the introduction of digital television, the Government asked the then Australian Broadcasting Authority to set aside this channel capacity for uses other than FTA television broadcasting when undertaking planning for digital services. It was envisaged that these channels could be used for new and innovative services that did not resemble traditional television under the new licensing category, datacasting. In 2001 a process commenced for the allocation of datacasting transmitter licences, but this process was cancelled for a number of reasons including lack of competitive tension.

A statutory review of datacasting was undertaken in 2001 and 2002. The Government decided at that time that there should be no change to the rules relating to the content which is permitted to be provided under a datacasting licence, and decided not to proceed with the long-term allocation of datacasting transmitter licences but to encourage use of the spectrum for trials of digital services.

There is an opportunity now to reconsider the allocation of these two channels, which would enable an increase in the diversity of new digital services available to consumers and provide opportunities for new operators to enter the market.

The Government has a strong interest in deploying this spectrum, which is a scarce resource, to provide significant opportunities for new innovative digital service options of interest and value to consumers.

The options for the use of these channels are:

- a) allocation for a new, fourth commercial FTA television network; or
- b) allocation for other digital broadcasting and related services (such as subscription services, narrowcasting, or data services, which can be provided to fixed or mobile receivers).

Moratorium on new commercial television licences

The current legislated moratorium on the allocation of new FTA commercial television licences expires on 31 December 2006.

The Government considers that a clear case for allocation of a new FTA commercial terrestrially-delivered network has not been established at this stage. The Government considers that the existing arrangements for conventional commercial television are meeting the current needs of consumers in providing quality FTA television to Australian viewers. In addition, competing platforms such as subscription TV, the internet and mobile content platforms are providing additional and diverse services to viewers. Given the current broadcasting spectrum constraints, with only two digital

channels available, the Government considers there is a public interest in encouraging the emergence of new and different digital services on this unallocated spectrum that do not mirror existing FTA television services on the available spectrum.

Therefore, whilst the Government is not proposing to formally extend the legislated moratorium on the issue of further licences, it does not propose to allocate any new terrestrial commercial television licences at the end of the current moratorium period.

The Government proposes to review the scope for new FTA commercial television broadcasting licences within the BSB spectrum at a time closer to the end of the digital/analogue simulcast period, in accordance with the Digital Action Plan. It is not envisaged that any new terrestrial commercial television licences in the BSB would be issued prior to the end of the simulcast period.

Clearly, following analogue switchover additional spectrum will become available and that will provide further opportunities for new services to emerge.

Consistent with its election commitment, the Government will amend legislation to ensure that the decision about whether to allocate new FTA commercial television licences will be a matter for the government of the day, rather than for ACMA.

New digital services on broadcasting spectrum

On the basis that the two unallocated digital channels are not used for a fourth commercial FTA television network, there is an option for the Government to make them available for new digital services. This would enable the emergence of new and innovative services for consumers that would contribute to diversity and provide extra content and services for viewers.

The range of applications that could be provided by holders of a datacasting transmitter licence (DTL) is limited by legislation until 1 January 2007. The services that can be provided by a holder of a DTL are currently restricted to those services permitted under a datacasting content licence - a limited range of specified content such as information-only programs, educational programs, interactive computer games, Parliamentary broadcasts and electronic mail.

However, in the absence of legislative change, the relevant legislation provides that, from 1 January 2007, datacasting spectrum will be able to be used to provide a significantly expanded range of digital service types. Consistent with the Government's view that datacasting should not be a de-facto way of providing a new commercial television network, this spectrum will not be permitted to be used for a new FTA commercial television service. Under the proposed expanded uses, subject to obtaining the relevant licence, datacasting transmitter licensees would potentially be able to provide services such as a range of FTA "narrowcast" channels including religious, ethnic, or home shopping channels, or subscription TV services.³ This is in addition to the types of services which could be currently provided under a datacasting content licence.

³ Narrowcast television services are television services that are limited in reception by being focused, for example, on special interest groups or providing programs of limited appeal.

In addition, these potential new services are not confined to those designed for reception by traditional television or radio receivers. Alternative service options might include delivery of television services to mobile or handheld devices using the DVB-H standard or similar technology. Emerging service models in trials to date suggest that, like other mobile communications services, mobile TV is likely to be provided on a subscription basis.

Trials of datacasting services are currently underway in Sydney providing a range of material including traffic and weather reports, text-based news, Government information such as employment opportunities and public health information, financial information, Parliamentary audio channels and shopping channels. Trials of mobile television services are being conducted in a number of countries at present including Australia, where DVB-H is being trialled in Sydney with a number of broadcasters and other suppliers providing content. These services are being provided from existing broadcasting transmitter towers using BSB spectrum to transmit to specially designed mobile receivers. The models being used in both the datacasting and DVB-H trials demonstrate a key characteristic of datacasting transmitter licensing arrangements, which allow for one operator to provide the transmission infrastructure with others providing some or all of the content services.

The Government recognises that one of the challenges in the design of new services will likely be the adaptation of suitable content. International mobile TV trials suggest that consumers may prefer short clips, sometimes referred to as 'snack content', such as news headlines, sports highlights, music videos, entertainment and information that can be accessed when convenient to the user.

New compression technology standards, such as MPEG-4, if adopted, would likely add to the options available to datacasters by enabling more efficient use of the spectrum and increasing the number of program channels able to be provided in each of the 7MHz channels. Depending on the types of services offered, MPEG-4 may enable in the vicinity of 30 channels to be provided over this spectrum. The emergence in Europe of digital set top boxes that are capable of receiving signals using both MPEG-2 (the current standard) and MPEG-4 may provide a transitional solution where broadcasters are transmitting in both standards.

The use of spare spectrum channels for this expanded range of applications could provide significant opportunities for new innovative digital service options of likely interest and value to consumers. These services have the potential to contribute to greater choice and diversity and to provide extra content and services for viewers that do not replicate traditional television services. The Government therefore proposes an option to build on the legislated end date of provisions that currently restrict the types of datacasting services that can be provided on this spectrum and make these channels available for this expanded range of digital services.

Since 2001, FTA broadcasters have been permitted but not required to provide datacasting services on their existing digital spectrum. Legislation prohibits them from controlling licences to use additional datacasting spectrum on the basis that spectrum for new datacasting services ought to be available to new operators rather than existing service providers, and thus increase media diversity. The Government's

preferred option is to retain this prohibition so as to maximise the opportunity for new players to enter the market in ways which are consistent with its decision not to allocate new commercial FTA BSB television licences at this stage.

The acquisition of this datacasting spectrum by other parties would be subject to the operation of the *Trade Practices Act 1974*. The Government could also consider applying ‘use it or lose it’ obligations on licensees to ensure the community benefits from service rollout in a timely fashion.

If this option is adopted, the Government would consider whether there should be particular obligations or restrictions placed on operators of these new services to assist in meeting its objectives of providing significant opportunities for new, innovative digital service options of interest and value to consumers, and services which have the potential to contribute to diversity. In doing so, the Government would have regard to the obligations and restrictions which currently apply to FTA and subscription broadcasters. To ensure that these new services encourage take-up of digital FTA receivers, the Government may specify that at least one of the channels must be used for ‘in home’ digital FTA services – services which can be received free of charge on current digital television receivers. The Government recognises, however, that such constraints may have the potential to reduce the flexibility to operate a commercially sustainable model for the use of this spectrum and would balance these competing interests when considering how to allocate the spectrum.

There are a range of other matters relating to the method of allocation of datacasting spectrum which require decisions by the Government. Legislation provides for a price-based allocation of datacasting transmitter licences, which would normally be undertaken by auction. Alternative methods of allocation could be considered. The legislation also provides that datacasting transmitter licences are to be issued for a 10 year period with the possibility of renewal for one five-year period. This licence period is similar to the licence period for spectrum licences.

In addition, there are technical issues associated with any allocation, which will require further consideration by the Government. These include:

- whether the channels would be sold separately or together;
- whether they should be sold by licence area or on a wider geographic basis;
- whether there are any technical issues which might affect the use of this spectrum;
and
- the timing of the allocation in particular markets.

ACMA has been asked to commence planning and provide advice to the Government on technical issues and on the initial scope of work in relation to potential allocation. This advice will cover matters such as the range and technical characteristics of channels available in each market, possible uses for and commercial interest in datacasting spectrum, including their suitability for alternative technologies such as mobile television, and other technical matters such as standards and compression technologies. ACMA will consult separately with stakeholders on these issues. This

preliminary work by ACMA will better inform the Government's decisions and does not represent a commitment by the Government to proceed with allocation of this spectrum or to do so in a particular manner.

New digital services on other platforms

The current moratorium on new commercial TV licences includes new commercial FTA broadcast services delivered over platforms other than normal BSB channels, such as wireless, satellite and broadband networks.⁴ The end of the current legislated moratorium means that, in the absence of legislative change, such services will be able to emerge from 1 January 2007.

The availability of licences for commercial FTA broadcast services to be delivered over platforms other than normal BSB channels would offer an opportunity for new players to enter the industry and new television-like services to be developed over new and emerging platforms. For example, it may be possible to provide commercial television services via satellite or broadband using IPTV technology or terrestrial wireless services in spectrum outside the BSB.

Consistent with its election commitment in respect of the allocation of commercial FTA television licences, the Government proposes to legislate to transfer the decision-making power for the allocation of new commercial television licences outside BSB spectrum from ACMA to the government. In considering applications for such licences after 31 December 2006 the Government will consider whether allocation is in the public interest. The process for allocating such licences will be considered further.

Potential operators of these new services outside BSB spectrum would face barriers compared to existing operators in that their services will not be directly receivable by existing television sets/antennas. Providers of these services would also need to obtain access to infrastructure for transmission and carriage of their service, for example, by purchasing satellite transponder capacity or obtaining access to cable capacity. Unlike commercial broadcasting services, the licences for these services will not carry with them the automatic right to access spectrum. To be successful, these services would have to compete with profitable industry players with established brands, extensive content libraries, and which can be received by virtually all Australians.

Media ownership regulation is intended to ensure ownership diversity of the most influential and ubiquitous media platforms which operate within the BSB spectrum. At present, the media ownership and control provisions in the BSA apply to these services in the same way as they do to services operating within the BSB. Consistent with other preferred options for changes to cross and foreign media ownership

⁴ Services that provide television or radio programs over the internet are already exempt from the moratorium because they are not, in terms of broadcasting laws, considered to be broadcasting services. In 2000, the then Minister for Communications, Senator the Hon Richard Alston, issued a Determination, under paragraph 6(1)(c) of the BSA determining that a 'broadcasting service' does not include a service that makes available television programs or radio programs using the internet, unless it delivers such programs using the BSB of spectrum.

restrictions, the Government proposes to exempt FTA commercial broadcasting services operating outside the BSB from the specific media ownership and control provisions. The exemption would commence at the same time as amendments to the cross media and foreign ownership restrictions on commercial BSB broadcasting services and newspapers, discussed further below, come into effect.

Accordingly, services on these new platforms would not be subject to rules such as the licence area ownership limits, the 75 per cent audience reach restrictions or cross-media ownership restrictions. However, the general competition law applying to all sectors of the economy and the *Foreign Investment Policy* provisions relating to 'sensitive sectors' including media would apply.

While the existing restrictions have had little impact to date because new platforms are only now emerging, it is important that unnecessary and burdensome constraints which may stifle growth of new services on new platforms for both new and existing broadcasters are not applied.

The Government proposes that the acquisition of rights to an event on the anti-siphoning list by a commercial FTA broadcaster operating outside the BSB would not satisfy the requirement that before a subscription TV licensee could acquire rights, a national or commercial FTA broadcaster must have acquired the rights or the event has been delisted.

This is consistent with the intent of the anti-siphoning scheme which is to ensure that events of national significance and cultural importance that have traditionally been available on FTA television services operating in BSB spectrum would continue to be available to these broadcasters and their viewers, despite the introduction of subscription TV services in Australia.

Further consideration would be given to the degree of other regulation that should apply to these services (for example, local content rules), in line with the general intention set out in the BSA that different levels of regulatory controls should be applied across the range of broadcasting services according to the degree of influence of those services. As far as possible, a consistent approach should be developed to regulation across different types of digital services, which reflects the nature of those services rather than their method of delivery.

2.1) NEW SERVICES ON SPARE SPECTRUM AND OTHER PLATFORMS

The Australian Government's preferred options:

a) Fourth network moratorium

- i) The moratorium on new commercial television licences, which expires on 31 December 2006, would not be extended.
- ii) The Government will legislate to transfer the decision-making power for the allocation of new commercial FTA television licences from ACMA to the government, consistent with its election commitment.
- iii) No new licences for commercial FTA services in BSB spectrum will be allocated at the conclusion of the moratorium.
- iv) Prior to the end of the simulcast period and in accordance with the Digital Action Plan, the Government will review whether additional FTA commercial television licences should be allocated using BSB spectrum. It is not envisaged that any new licences would be allocated prior to the end of the simulcast period.

b) New digital services on broadcast spectrum

- i) Two reserved digital channels of terrestrial spectrum would be allocated as soon as practicable in 2007 in markets for new digital services.
- ii) From 1 January 2007, subject to licence requirements, options for these services may include subscription TV services, FTA niche 'narrowcasting' services, as well as interactive and short video or 'datacasting' services, whether delivered to fixed or mobile television receivers. They would not include a new FTA commercial television service.
- iii) This would provide opportunities for new innovative digital service options of interest and value to consumers, rather than services that mirror traditional television services.
- iv) Commercial and national broadcasters would continue to be permitted to provide datacasting services on their existing digital spectrum.
- v) The current prohibition on commercial and national broadcasters being able to control datacasting transmitter licences would be retained.
- vi) The Government will consider what, if any, obligations or restrictions should be placed on operators of these new digital services and the manner in which the channels should be allocated. In doing so, the Government would have regard to the obligations and restrictions that currently apply to

FTA and subscription broadcasters.

c) New services on other platforms

- i) The Government will legislate to transfer the decision-making power for the allocation of new commercial FTA television licences delivered outside BSB spectrum (such as wireless, satellite and broadband services) from ACMA to the government.
- ii) In considering applications for such licences after 31 December 2006 the Government will consider whether allocation is in the public interest. The process for allocating such licences will be considered further.
- iii) Commercial FTA broadcasting services operating outside the BSB spectrum would be exempted from the media ownership and control provisions of the BSA at the same time as commercial BSB broadcasting services and newspapers are exempted.
- iv) Commercial FTA broadcasting services operating outside the BSB spectrum would remain subject to general competition law and the *Foreign Investment Policy* provisions relating to 'sensitive sectors' including the media.
- v) The *Broadcasting Services Act 1992* would be amended to provide that the acquisition of rights to an event on the anti-siphoning list by a commercial FTA broadcaster operating outside the BSB would not satisfy the requirement that before a subscription TV licensee could acquire rights, a national or commercial FTA broadcaster must have acquired the rights or the event has been delisted.

2.2) EXPANDING SERVICE OPTIONS FOR EXISTING FTA BROADCASTERS

International experience indicates that the availability of new content, including access to additional channels provided by existing broadcasters, adds to the attractiveness of digital television for consumers.

Analogue switchover would provide a natural point, from both a practical and policy perspective, for further changes to the digital television regime to occur which would enable existing FTA broadcasters to use their digital spectrum in a more flexible way, including providing new services if they wish to.

Consequences of analogue switchover

The Government's digital television regulatory framework introduced in 1998 and 2000 provided for a managed process of conversion from analogue to digital broadcasting. The current policy settings were envisaged as transitional arrangements to provide industry with a period of regulatory certainty in order to make the significant investments required in digital infrastructure and to encourage consumers to switch over to digital and minimise risks of disruption to the services that consumers are familiar with and enjoy. Regulatory requirements such as the simulcast requirement, the restriction on multichannelling and the high definition television (HDTV) quota were intrinsic to this approach. They ensure that during the transition from analogue to digital, viewers of analogue and digital FTA television have access to substantially the same television programming.⁵

Once the transition to digital has taken place, the rationale for the transitional provisions, which are based on replicating traditional analogue television in digital must be re-evaluated. From analogue switchover, FTA broadcasters will be broadcasting solely in digital and will be operating in a dynamic and competitive digital world which is significantly different from the analogue environment of the past. Restrictions on the way in which FTA broadcasters can use their spectrum to provide their services must be considered in that new context.

Multichannelling

As part of the transitional arrangements for digital broadcasting, the BSA provides for the lifting of the prohibition on multichannelling by commercial FTA broadcasters at the end of the simulcast period.

Commercial broadcasters

Currently in Australia, commercial FTA broadcasters are not permitted to provide digital multichannels. The prohibition on multichannelling was intended to provide the developing subscription TV sector with some protection from a potential source of competition in its early years. At the time the digital television regime was implemented in Australia, it was considered that HDTV would be a key part of the future of digital television in Australia.

⁵ For a description of the 'simulcast period' and 'analogue switchover', see footnote 1.

There are differing views amongst stakeholders on the likely impact of multichannelling by commercial broadcasters and the ways in which it should be implemented. Concerns have been raised by some broadcasters about the commercial impact on both commercial FTA and subscription TV broadcasters if the prohibition on multichannelling were to be removed now. In addition, some in the industry have raised concerns about the technical capacity of broadcasters to provide both multichannels and the highest quality HDTV (1080i) on their available spectrum using existing MPEG-2 compression standards. In recognition of the need for a balanced approach to reform and to ensure industry stability, the Government proposes to substantially retain the current arrangements for multichannelling by commercial broadcasters until analogue switchover.

The Government's preferred option is that commercial FTA broadcasters would be allowed to provide full multichannelling from the end of the simulcast period. The removal of the prohibition on multichannelling would **allow**, rather than **require**, broadcasters to offer multichannel services. The Government's proposed approach recognises that while multichannelling restrictions have provided a period of stability during the transition period to digital, analogue switchover provides a natural end point for these restrictions - a position which is already reflected in legislation.

As an interim measure to provide some additional flexibility to broadcasters, from 1 January 2007 the Government could remove the requirement that the HDTV version of a broadcaster's digital service be a simulcast of its standard definition television (SDTV) service. This is discussed further below in the section on High Definition television.

The question then arises as to how these regulatory changes to permit full multichannelling could be brought into effect. It is proposed that the Digital Action Plan would set the agenda and timeframe for these changes to occur, possibly region by region in conjunction with analogue switchover. Clearly, the most influential markets for analogue switchover and multichannelling will be the metropolitan markets as it is the metropolitan broadcasters who are most likely to provide the additional content that would be available on multichannels provided by both metropolitan and regional broadcasters.

The Government recognises arguments that support multichannelling being permitted in advance of the amendments to other industry settings such as removal of the HD quota and analogue switchover, but considers on balance, that the longer term interests of consumers and industry are best served by ensuring stability in the transition to digital and by expediting the switchover to digital through the Digital Action Plan. However, the Government is prepared to reconsider the timing for relaxation of the restrictions on full multichannelling should there be any significant changes in the lead up to analogue switchover which alters the balance in favour of an earlier adjustment. These potential changes could include technological advances or any unanticipated delay in achieving the timeframe for switchover.

Prior to analogue switchover, or as part of any earlier decision on multichannelling, the Government will further consider arrangements for the regulation of multichannels, including, for example, appropriate Australian content rules and

captioning obligations, for commercial FTA broadcasters. In considering such regulation, the Government would have regard to the obligations applying to other digital services.

National Broadcasters

The national broadcasters (ABC and SBS) are permitted to provide multichannels, but are subject to legislative restrictions which limit the genres of programming they are permitted to broadcast. For example, national broadcasters are allowed to provide educational, science, religious, health programs and children's programs on new digital channels, but not programs such as national news broadcasts, drama, movies and most sport broadcasts. Both the national broadcasters currently provide multichannels subject to these restrictions.

Evidence from overseas markets such as the UK suggests that public broadcasters can play a significant role in driving digital television take-up by providing attractive new digital content.⁶ It is appropriate for the national broadcasters to be innovators with the use of new technologies. An expanded ability to provide multichannelling has the potential to provide the ABC and SBS with substantial new opportunities to experiment with digital program production and new digital services such as interactivity. It would also be consistent with their public service role, for example, by enabling them to make further use of their valuable archival material.

Increased demand and capacity for digital programming can also provide new opportunities for local Australian content producers, with multichannels providing the national broadcasters, in particular the ABC, with the ability to showcase more local content. The Government is aware of concerns in this area and is continuing to monitor the issue of local content levels on the national broadcasters.

The national broadcasters have publicly expressed a strong desire for the current restrictions on their capacity to multichannel to be removed. The genre restrictions represent a practical limitation on the ability of the national broadcasters to develop new services that could attract wide audience interest for digital television. The Government's preferred option is to remove the current genre restrictions and allow full multichannelling by the national broadcasters, subject to rules about anti-siphoning sports described below. This would be done as soon as practicable, upon passage of the necessary legislation. As mentioned above, the Government could also remove the requirement that the HDTV version of a broadcaster's digital service be a simulcast of its SDTV service.

Sport

While digital take-up is still relatively low, the migration of events on the anti-siphoning list to multichannels would be inconsistent with the objective of the anti-

⁶ For example, the BBC has played a significant role in the UK as a driving force in the establishment of the Freeview platform and by adopting and demonstrating the innovative programming enabled by digital television such as interactive programming. Whilst there are differences between the UK and Australia, including the significant source of funding for the BBC provided through licence fees, there are lessons for Australia from the UK's apparent success in implementing digital television with strong leadership from the public broadcaster.

siphoning scheme, which is to provide the widest access for viewers to listed events. It would also have an adverse impact on the subscription TV industry's capacity to provide sports programming.

Accordingly, the Government proposes that FTA broadcasters would be prohibited from broadcasting sports events on the anti-siphoning list on any digital multichannels unless the content has already been shown (or is shown simultaneously) on their main channel⁷. This restriction would initially apply to national broadcasters, on the basis of the proposal that they be permitted to provide full multichannelling services during the simulcast period. This same restriction on multichannelling of sports on the anti-siphoning list would also apply to commercial broadcasters in the event that they are permitted to multichannel prior to analogue switchover.

As discussed below, the Government proposes to review the ongoing rationale for the anti-siphoning scheme prior to the expiry of the current list on 31 December 2010 and in the context of the end of the simulcast period. This review would also consider the restriction on the national and commercial broadcasters multichannelling sport on the anti-siphoning list.

High Definition television

FTA broadcasters are currently required to meet a quota of 1040 hours per year of HDTV programs.

HDTV quotas were intended to ensure that a minimum level of HDTV programming was provided by broadcasters in the early years of digital television. It is not envisaged that will be necessary to retain HDTV quotas indefinitely because either HDTV will become sufficiently popular for there to be a strong market demand, in which case a quota may be redundant, or HDTV will remain a small niche service, in which case a quota may be counterproductive. The Government proposes to remove the HDTV quota obligations at the same time as full multichannelling by commercial broadcasters is permitted. At this stage, it is proposed that this would be at the end of the simulcast period.

As mentioned above, in addition to quotas, broadcasters are currently required to provide a simulcast of their SDTV service in HDTV format. To provide broadcasters with some additional flexibility in their HDTV service, the Government could remove this simulcast requirement so that the HDTV service could be differentiated from the SDTV service. The Government recognises that broadcasters may opt to continue to simulcast in HDTV and SDTV, particularly during prime time, however this increased flexibility would give broadcasters the opportunity to experiment with different programming in HDTV if they choose and could potentially increase the range of programs provided to consumers in HDTV.

To maintain the integrity of the anti-siphoning scheme, broadcasters would be prohibited from televising sport on the anti-siphoning list on any non-simulcast

⁷ In this context, the main channel is the digital channel which is the simulcast of the analogue channel. Further consideration will be given to the practical implementation of this principle following analogue switchover, if it becomes clear that a service no longer has a clearly defined 'main channel'.

HDTV channel unless the sporting event has already been shown (or is simultaneously shown) on the SDTV service.

This approach would also benefit licensees in key regional markets. These regional licensees provide a number of sub-regional services in order to provide local advertising and to meet licence conditions which require them to broadcast minimum amounts of local programming to specific locations within their licence area. This means that regional licensees are required to simulcast these different sub-regional services in SDTV and HDTV, which involves providing multiple HDTV streams. This is a significant cost for the broadcasters concerned. Removing the requirement that the HDTV service be a simulcast of the SDTV service would enable regional licensees to show one, rather than multiple, HDTV program streams across their entire licence area. Viewers would continue to receive the sub-regional services in SDTV.

In the event the Government does not settle on the option to remove the HDTV simulcast requirement for all broadcasters, for the reasons described above it is proposed to make amendments to enable regional licensees to show one HDTV program stream across their entire licence area. This would be based on their SDTV service, but broadcasters would be permitted to choose one of their sub-regional streams to simulcast.

Anti-siphoning

The anti-siphoning rules were introduced to ensure that important sporting events which have traditionally been available on FTA television would continue to be available to FTA broadcasters, despite the introduction of subscription TV. The Government considers that this rationale remains, and Australian FTA broadcasters continue to provide high quality coverage of a large variety of sports valued by Australian audiences.

Nevertheless, there is scope for further scrutiny of the anti-siphoning list and the number of events on it. There are currently a number of events on the list that are protected in their entirety despite not all the events in the competition being broadcast. This is particularly the case with tournaments which comprise multiple rounds such as tennis and golf.

The Government is aware of the commercial FTA broadcasters' views on the existence of a 'loophole' in the anti-siphoning regime. Regardless of the suggested existence of such a loophole, most parties agree that the regime has generally met its objective, which is to ensure as far as possible that events on the anti-siphoning list continue to be shown on free-to-air television. However, in recognition of the evolving nature of the media market, the Government will continue to monitor this issue.

The Government's preferred option is to apply a 'use it or lose it' approach to the anti-siphoning scheme, under which, in the event FTA broadcasters fail to provide adequate coverage of a listed event, that event would be considered for removal from the list.

The Government has directed ACMA to monitor ‘use’ of listed events by FTA and national broadcasters commencing on 1 January 2006. ACMA will report to the Minister at least every six months on which events have been acquired by FTA commercial or national broadcasters, how those rights were used, and whether unused or partially-used rights were offered to other broadcasters, including subscription TV. It is envisaged that ACMA will submit its reports after the completion of events taking place during a ‘winter season’ and then again following the completion of ‘summer season’ events. ACMA will provide a public version of this report taking into account commercial confidentiality requirements. Additional reports may be provided by ACMA to the Minister if appropriate.

The Government proposes to make use of this information to consider, from 1 January 2007 and on an ongoing basis, the need to retain events on the anti-siphoning list that may not have been adequately utilised by the FTA broadcasters. In considering whether to exercise power under s115 of the BSA to review the events on the anti-siphoning list, the Minister could have regard to the following principles.

- Consideration of the extent to which sports rights have been ‘used’ would be made in respect of whole listed ‘items’:
 - Some items on the anti-siphoning list comprise series of events such as premierships competitions and tournaments. These would be considered from the ‘item’ or whole of competition perspective drawing on information about the extent to which the rights to broadcast individual events in the item have been acquired and exercised.
 - Partial delisting of events comprising the item may be feasible but would be informed by consideration of coverage of the item in its entirety.
- Items could be considered after the conclusion of the final event comprising the item in a year. For example, the ‘use’ of AFL broadcast rights would be considered following the conclusion of the AFL premierships competition in September each year and receipt of ACMA monitoring information.
- Criteria which the Government is considering to enable an assessment of adequate usage could include:
 - what broadcast rights had been acquired by the FTA broadcaster;
 - whether the event or events which make up an item were shown by broadcasters able to reach at least 50 per cent of the population;
 - an event would be considered to have been broadcast if at least half of the total event was broadcast;
 - whether the event or events that make up the item were shown live, or near live (commencing within one hour of the start of the event);
 - whether a delay in showing the event or events that make up the item was intended to allow the event to be broadcast at a time of, or in a form, that would provide greater audience interest;

- relevant contractual obligations with the rights holder;
- in cases where free to air rights were not fully utilised, whether those rights were made available to another FTA broadcaster and whether any subscription TV rights held by the broadcasters were made available to a subscription TV operator on a reasonable basis; and
- other matters that may be relevant in individual circumstances.

The Australian media market place is undergoing rapid changes. Consumer interest in, and take-up of, subscription TV services and new broadcast platforms will significantly increase in coming years. The Government proposes, therefore, that a review be undertaken during 2009 to consider the ongoing rationale for the anti-siphoning scheme after the expiry of the current list on 31 December 2010, and in the context of analogue switchover and the Digital Action Plan. This review would also consider the restrictions on the commercial and national broadcasters televising sport on the anti-siphoning list on any new digital channel unless the sporting event has already been shown (or is simultaneously shown) on the main service.

2.2) EXPANDING SERVICE OPTIONS FOR EXISTING FTA BROADCASTERS

The Australian Government's preferred options:

a) Consequences of analogue switchover

- i) Analogue switchover and the end of the simulcast period would provide a natural point, from both a practical and policy perspective, for further changes to the digital television regime.

b) Multichannelling

Commercial broadcasters

- i) The current restrictions on commercial television broadcaster multichannelling would be removed at the end of the simulcast period, consistent with the transitional nature of the current policy settings and the Digital Action Plan.
- ii) The Government is prepared to reconsider the timing for relaxation of the restrictions on full multichannelling should there be any significant changes in the lead up to analogue switchover which alters the balance in favour of an earlier adjustment.
- iii) Arrangements for the regulation of multichannels by commercial FTA broadcasters, including, for example, appropriate Australian content rules and captioning obligations, would be considered prior to the end of the restrictions on commercial television broadcaster multichannelling. In considering such arrangements, the Government would have regard to the obligations applying to other digital services.
- iv) In the event the restrictions on commercial broadcaster multichannelling are removed prior to the end of the simulcast period, to maintain the integrity of the anti-siphoning scheme, commercial broadcasters would be prohibited from televising sport on the anti-siphoning list on any new digital channel unless the sporting event has already been shown (or is simultaneously shown) on the main service.
- v) Prior to the expiry of the anti-siphoning list on 31 December 2010 and the end of the simulcast period, the Government would review the ongoing rationale for the anti-siphoning scheme including the restriction on commercial broadcasters televising sport set out in paragraph (iv) above.

National broadcasters

- i) The genre restrictions on national broadcaster multichannelling would be removed as soon as practicable, upon passage of the necessary legislation.

- ii) The Government would continue to monitor the issue of local content levels on the national broadcasters.
- iii) To maintain the integrity of the anti-siphoning scheme, the national broadcasters would be prohibited from televising sport on the anti-siphoning list on any new digital channel unless the sporting event has already been shown (or is simultaneously shown) on the main service.
- iv) Prior to the expiry of the anti-siphoning list on 31 December 2010 and the end of the simulcast period, the Government would review the ongoing rationale for the anti-siphoning scheme including the restriction on the national broadcasters televising sport set out in paragraph (iii) above.

c) High Definition Television

- i) The current HDTV quota of 1040 hours per year would be retained until the end of the simulcast period, consistent with the transitional nature of the current policy settings and the Digital Action Plan.
- ii) As an interim measure, from 1 January 2007, the Government could remove the requirement that the HDTV version of a digital television service be a simulcast of the SDTV service. This option would effectively allow FTA TV broadcasters to run one multichannel in HDTV in advance of switch-off.
- iii) To maintain the integrity of the anti-siphoning scheme, broadcasters would be prohibited from televising sport on the anti-siphoning list on any non-simulcast HDTV channel unless the sporting event has already been shown (or is simultaneously shown) on the SDTV service.
- iv) In the event the Government does not implement the option in (ii) above, regional broadcasters would be permitted to provide a single HDTV service throughout their licence area without the requirement for multiple local break-outs.

d) Anti-Siphoning

- i) Commencing 1 January 2007, a “use it or lose it” scheme would be introduced for events on the anti-siphoning list, based on the results of ACMA’s first year of monitoring.
- ii) The scheme would identify criteria against which “use” of an event by a FTA broadcaster could be measured and, if the event is not “used”, it may be removed from the anti-siphoning list.
- iii) Ministerial discretion would be retained in respect of any decision to remove events from the anti-siphoning list.
- iv) The ongoing rationale of the anti-siphoning scheme and the extent to

which it is meeting its objectives would be reviewed in 2009, prior to the new list expiring on 31 December 2010 and in the context of the end of the simulcast period. This review would also consider the restrictions on the commercial and national broadcasters televising sport on the anti-siphoning list on any new digital channel.

- v) The Government would continue to monitor the matter identified by FTA broadcasters as the “loophole” in the anti-siphoning regime.

2.3) MEDIA OWNERSHIP AND CONTROL

Media Ownership

The Government has a long-standing commitment to media ownership reform.

The BSA currently provides for specific foreign ownership restrictions in relation to television, but not radio. There are also specific restrictions on foreign ownership of newspapers that form part of the Government's *Foreign Investment Policy* (FIP) under the *Foreign Acquisitions and Takeovers Act 1975* (FATA).

The current cross media restrictions in the BSA prohibit a person from being in a position to exercise control of, or from being a director of, any combination of a commercial television licence, commercial radio licence or an associated newspaper, in the same licence area.

These cross-media laws increasingly risk inhibiting the growth of new services, limiting media companies from obtaining economies of scale and scope, constraining them in addressing the challenges posed by emerging media forms and foreclosing future developments in the marketplace. As a result, investment and innovation in Australian media is limited, which thereby risks undermining the BSA's objective in section 3(b) "to provide a regulatory environment that will facilitate the development of a broadcasting industry... that is efficient, competitive and responsive to audience needs." These effects are potentially detrimental for both industry and consumers.

In the 2004 election, the Government reaffirmed its commitment to reforming Australia's media ownership laws, while protecting the public interest in a diverse and vibrant media sector.

A combination of reforms that would both enable new services and new players to emerge and allow existing media providers to respond more flexibly to the dynamic digital market place offer the potential for improved services and choice to media consumers. The Government considers that the technology and market changes currently occurring in the media sector have rendered existing media ownership restrictions increasingly in need of review.

Foreign Ownership

The restrictions on the foreign ownership of free to air and subscription television licences are contained in the BSA.

The Treasurer has oversight of all material foreign investment in Australia under the FATA and the FIP. The media sector is specifically identified as a 'sensitive sector' under the *Foreign Investment Policy* and therefore all material foreign investment in that sector is subject to approval by the Treasurer.

In the Government's view, there is no compelling basis for singling out newspapers and commercial FTA television as requiring limitations on foreign investment separately from those that apply across the media sector. The safeguards provided by

the media sector's status as a "sensitive sector" should be sufficient to ensure that any investment that is contrary to Australia's national interest is prevented.

The United Kingdom, New Zealand and Germany all have no sector-specific restrictions on foreign investment in broadcasting or print.

The United States prohibits foreign governments or their representatives from holding a broadcasting station licence in the US, and investment by foreigners is limited to 20 per cent for direct investment and indirect investment to 25 per cent. However, these limits are subject to waiver by the FCC should it be deemed to be in the national interest.

Foreign investment in Canadian broadcasting companies (*eg.* terrestrial television, cable and satellite programming services, radio) is limited to 20 per cent of the voting interest at the licence level, and 33.3 per cent of the voting interest at the parent or holding company level.

In France, foreign (non-EU) ownership is limited to a 20 per cent share of the capital or voting rights of any media company broadcasting or publishing in the French language, unless the investor's country allows French citizens to own more than 20 per cent of a like media firm in their home country.

Given the existing safeguards in the FATA and FIP, the Government proposes to remove the current legislated television-specific foreign ownership restrictions and newspaper-specific foreign ownership policies.

Cross-media

The current cross media rules specify that a person may control either commercial television or commercial radio or associated newspapers in a licence area. There are also specific licence and reach rules which provide that within a licence area, a person may not control more than one TV licence or two radio licences, and a person must not control TV licences that reach more than 75 per cent of the population.

In seeking to reform media ownership, the Government submitted the Broadcasting Services (Media Ownership) Bill 2002 to the previous Parliament. This Bill contained measures to enable cross-media holdings. Following extensive Parliamentary debate and amendment, the Bill contained a complex set of measures that relied on increased regulation, rather than liberalisation, to protect media diversity. The resulting Bill entailed a high degree of intervention in the commercial operations of media organisations, such as a rule requiring editorial separation of cross-held entities.

In reconsidering its approach to media ownership reform, the Government considers that media diversity would be best served by clear protection against excessive ownership concentration amongst traditional media outlets, combined with a liberalisation of market entry opportunities and relaxed regulatory barriers for new platforms and services, that would assist in delivering diversity and choice for consumers.

The United Kingdom, Canada, Germany and New Zealand all take a more liberal approach to cross-media mergers than the current Australian restrictions. In the United Kingdom, cross-media ownership is permitted in all but the smallest markets, as long as there are at least three independent media proprietors and the BBC, but companies with significant holdings in the national newspaper market are not permitted to own Independent Television (ITV) licences, which comprise the primary commercial free-to-air broadcasting network. Media mergers may also be prohibited if the relevant Minister considers them a threat to plurality of ownership, diversity of content or freedom of expression.

In Canada, media companies are able to own a newspaper and hold broadcasting licences in the same market, subject to the “benefits test” and, where relevant, the maintenance of editorial separation. There are no national cross-media ownership restrictions in Germany, although states have the ability to restrict shareholdings of newspapers publishers in local or regional broadcasters. New Zealand has no rules limiting cross media ownership.

In the United States, ownership of a television or radio licence and a newspaper is prohibited, while ownership of both television and radio licences is permitted in larger markets. However, the Federal Communications Commission is, in accordance with US Congressional requirements, continuing to consider revisions to media ownership restrictions, and has previously proposed easing them to take greater account of different market sizes.

In France, cross media mergers are only permitted for media organisations with limited circulation or reach. France also includes cable television in its restrictions.

The protection of diversity in the control of commercial broadcasters and newspapers remains an important regulatory objective of the BSA. However, despite the proliferation of new media which has created additional sources of information and opinion, commercial broadcasters and newspapers remain the most widely used and influential media sources.

The Government therefore proposes to retain important constraints on ownership concentration of the currently regulated platforms (commercial TV and radio) and newspapers to ensure a continuing diversity of commercial sources of information and entertainment, while also enabling greater freedom for both existing and new media groups to engage in legitimate diversification strategies on traditional and new platforms. In addition to the regulated platforms and potential new services, consumers would continue to have access to two national broadcasters, community television and radio broadcasters, subscription TV, the internet and ‘out of area’ newspapers (such as national newspapers).

At the same time, competition law will continue to address issues of market dominance and concentration within the media sector such as the lessening of competition in the advertising, classifieds and general content markets that could occur with the establishment of a dominant media player in a market.

The Government is considering options for implementing reforms within the following framework.

- Cross-media transactions would be allowed subject to there remaining a minimum number of commercial media groups in the relevant market (four in regional markets, five in mainland state capitals)
 - A commercial media group would be comprised of one or more of a commercial television licensee, commercial radio licensee or associated newspaper (that is, those entities currently subject to the cross-media rules) where these are taken to be under common control, as defined in the BSA.

In addition to the required minimum number of commercial media groups in a market, consumers will continue to have access to two national broadcasters, community television and radio broadcasters, subscription TV, the internet and ‘out of area’ newspapers (such as national newspapers).

- Existing specific limits would be retained for regulated platforms:
 - a person must not be in a position to control more than one commercial television licence per market;
 - a person must not be in a position to control more than 75 per cent national audience reach for commercial television; and
 - a person must not be in a position to control more than two commercial radio licences per market.
- Television, radio or newspaper entities that are part of a cross-media group would be obliged to disclose the existence of that common control when they report on the activities of another entity within that group, to ensure audiences are provided with clear information when considering any such reporting.
- ACMA would oversee the operation of the BSA in relation to media transactions to ensure they comply with the ‘minimum number of media groups’ requirement and the licence and reach limits (diversity test).
- The ACCC would separately assess the competitive impacts of transactions, in accordance with the requirements of the *Trade Practices Act 1974* (TPA) (substantial lessening of competition test).

Regional services protections

The Government acknowledges the importance to regional Australians of “live and local” media and remains committed to ensuring that Australians in regional markets will continue to have access to locally relevant news and information programming regardless of any ownership changes that might take place between the media outlets in their market.

Licence conditions are currently imposed on television broadcasters in aggregated regional commercial television markets in regional Queensland, northern NSW, southern NSW and regional Victoria which require minimum levels of content to be broadcast on matters of local significance. In recognition of the importance of local

content to regional communities, the Government proposes to legislate to require the retention of these licence conditions and to extend this requirement to the aggregated market of Tasmania. Compliance with this licence condition is monitored by ACMA through audits of licensees in each licence area. ACMA is also required to ensure there is genuine competition between regional radio licensees. In April 2003, the Minister for Communications, Information Technology and the Arts directed the then-ABA to ensure that, following the sale of a commercial radio licence, if the program format of that service changes from one of broad appeal to one of more limited appeal, it would consider the allocation of a new commercial radio broadcasting licence in that licence area.

ACMA and the Government will continue to monitor the provision of local content in other regional television licence areas and on regional commercial radio services, and the Government may consider extending licence conditions relating to levels of local content to those markets if local content levels decline materially. However, the Government recognises that the imposition of greater regulatory requirements on regional broadcasters would involve additional costs. The capacity of this sector to meet additional obligations is ultimately linked to its commercial viability, including its capacity to achieve the economies of scale and scope that cross-media mergers can provide. The Government would balance these competing considerations when considering whether additional requirements such as local content requirements might be reasonably required.

The Government also understands the importance of maintaining diversity in regional markets. As a consequence of smaller audiences and higher costs, regional media markets have a lower level of diversity than the state capital cities. Larger regional centres generally have three television licensees, up to two owners of radio licences and one (or sometimes two) associated newspapers, making up to seven media groups. More often, regional licence areas feature three or two regional television services, one or two jointly-controlled commercial radio operators, and one or no associated newspapers. Accordingly, the majority of regional licence areas have five media groups where there is an associated newspaper and four or fewer where there is no associated newspaper.

In regional markets, therefore, the scope for wide scale mergers would be necessarily limited. In many licence areas, cross-media transactions would only be able to occur if media groups already present in a regional licence area divest television or radio licences or newspapers to owners not already operating there, thereby increasing the number of separately controlled media entities in those markets above the minimum number (proposed to be four for regional markets) for a merger to be permitted. For example, in a licence area with four separate media groups, if the current owner of two radio licences sold one of those licences to a new entrant, this would increase the number of groups to five and make a new merger possible.

The Government considers that this approach strikes an appropriate balance between allowing regional media companies to obtain the benefits of scale and scope which mergers can deliver, and protecting the public interest in maintaining diversity.

Given the already concentrated nature of media services and generally limited level of competition in the regions, it is not clear that the limited number of mergers that may

occur in regional markets would have a significant effect on the viability of the incumbents. Regional incumbents already enjoy a high level of protection with entry to commercial radio and television broadcasting strictly limited by moratoriums and the planning decisions of the broadcasting regulator. Further, as discussed below, issues of market structure would continue to be a matter for the ACCC.

Regulators' role

Australian Competition and Consumer Commission

The Government has considered whether additional measures are required within the TPA to address the competition implications of cross-media transactions. The Government's preferred option is that the media sector should remain subject to the TPA in its current form and, in particular, to the requirements of section 50 which prohibits any merger or acquisition that would have the effect of a substantial lessening of competition in a market.

The ACCC would, therefore, play a key role in ensuring that potential media transactions are carefully assessed for their impact on competition in relevant markets. This would complement the measures to protect the diversity of sources of news, information and entertainment to be administered by ACMA.

Once the Government's media reform framework has been settled, the ACCC would be asked to articulate its proposed approach to media mergers, particularly in relation to those factors that will affect its definition of media markets. The ACCC has indicated that its definition of media markets may need to be reconsidered as information technology and broadcasting technologies evolve and converge.

The Government understands that certainty for industry is important. The ACCC currently has powers to provide informal merger clearances. The Trade Practices Legislation Amendment Bill (No. 1) 2005, currently before Parliament, provides for the establishment of a voluntary formal clearance process for mergers, as recommended by the Dawson Review of the Trade Practices Act. This would assist media firms to be able to obtain binding advice in advance as to whether the ACCC would prohibit a merger.

In 2001, the Government amended the TPA to add regional Australia to the definition of a market in section 50(6). This enables the ACCC and the courts to consider the competitive impact of proposed mergers or acquisitions on substantial regional markets. In 2002, the ACCC launched its Rural and Regional Program to better inform regional businesses and consumers about their rights and obligations under the TPA. This includes Regional Outreach Officers who operate out of ACCC regional offices across Australia.

The Government recognises that the nature of regional media markets means that they are more exposed to the risk of market dominance by a strong media entity in, for example, areas such as advertising. However, under the Government's preferred approach, the ACCC will be able to consider, on a case-by-case basis, the impact of media transactions in regional markets on market concentration and structure in those

markets, including issues such as the potential market dominance of cross-media entities that result from mergers.

Australian Communications and Media Authority

Diversity

ACMA is required to monitor compliance with the cross-media and foreign ownership restrictions and commercial broadcasting licence and reach limits. The BSA permits parties to approach ACMA before a transaction and obtain temporary approval for incidental breaches of the restrictions arising from the transaction (except in relation to foreign ownership). In the event of a breach of the restrictions without temporary approval, ACMA may refer the matter to the Commonwealth Director of Public Prosecutions for prosecution, or it may direct the party to rectify the breach, including if necessary by prompt divestiture of the licence or shareholding causing the breach.

Under the Government's proposed approach described above, additional mechanisms would be established to enable cross-media transactions to be exempted from the current legislated restrictions, to be administered by ACMA. In particular, ACMA would oversee the operation of the BSA in relation to media transactions to ensure they comply with the 'minimum number of media groups' requirement and the licence and reach limits. ACMA would also continue to monitor and enforce compliance with broadcasters' licence conditions relating to matters such as local content requirements and content standards.

Powers

The growth in the potential number and range of media services in Australia will not change the expectations of audiences that media services are responsive and responsible, including in regard to the accuracy and fairness of the news and information and the provision of programs and content that are consistent with community standards. The Government considers that there is a sound basis for making some targeted enhancements to the powers of the broadcasting regulator, ACMA.

Strengthening ACMA's capacity to deal effectively with regulatory breaches, including in key areas covered by broadcaster codes of practice and licence conditions, would assist in ensuring the continued integrity of the regulatory framework.

The Government has consulted, through a separate position paper - *Proposed reforms to the broadcasting regulatory powers of ACMA* - on amendments to the BSA that would provide the regulator with a more appropriate gradation of powers to enable it to address issues in a timely and proportionate manner. The Government is currently considering stakeholder responses on this paper and may respond on this issue separately from its consideration of other media reforms.

Timing

The full benefit of market and technology changes, increased diversity and competition, have been impeded to date by some of the regulatory restrictions discussed in this paper. The options proposed by the Government would provide the opportunity for media companies to obtain economies of scale and scope through mergers, which may result in some consolidation of ownership of more traditional media platforms. However, the reforms would also open up opportunities for new entrants and a range of new services to develop over new and existing platforms, allowing increased diversity in sources of information and entertainment and, in many cases, also driving digital take-up.

A threshold question arises as to when media ownership reform should be implemented, bearing in mind the developments in digital broadcasting and the impact on industry and on opportunities for new services which can benefit consumers.

Reforms permitting cross media ownership, and foreign ownership of television and newspapers, could commence at the same time as licences for new digital services enabled by the automatic changes to the regulatory framework noted in earlier sections are allocated, expected to be in 2007. This would enable media transactions to occur, that may involve some consolidation of ownership amongst existing entities, together with opportunities for new digital services and new players to emerge. Alternatively, the Government could delay media ownership reform until the end of the simulcast period, in line with the Digital Action Plan, by which stage new digital services would already have emerged and the opportunities for new services will be substantially enhanced by the developments in digital technologies and the freeing up of additional spectrum.

The Government considers that there are sound reasons for implementing media ownership reform following the automatic changes to the regulatory framework in 2007 that would enable the emergence of new and innovative digital services that would add to the choices available to consumers. Implementation of cross and foreign media ownership reform would be complemented by the availability of new digital services over the currently reserved spectrum. Along with the Digital Action Plan to expedite analogue switchover and the changes to other industry settings at the end of the simulcast period, this will provide a solid framework to take media policy into the digital future.

2.3 MEDIA OWNERSHIP AND CONTROL

The Australian Government's preferred options:

a) Foreign ownership

- i) The current media-specific foreign ownership rules in the *Broadcasting Services Act 1992* would be removed.

- ii) The current newspaper-specific foreign ownership restrictions in the *Foreign Investment Policy* under *Foreign Acquisitions and Takeovers Act 1975* would be removed.
- iii) The media would be retained as a ‘sensitive sector’ under the *Foreign Investment Policy*.
- iv) Proposals by foreign interests to directly invest in the media sector, irrespective of size, would remain subject to prior approval by the Treasurer.

b) Cross-media transactions

- i) The cross-media rules would be amended to allow cross-media transactions to proceed, subject to there remaining a minimum number of commercial media groups in the relevant market (four in regional markets, five in mainland state capitals).
- ii) Existing limits on broadcasting licences would be retained: a maximum of two commercial radio licences in a radio licence area; one television licence in a licence area, and no more than 75 per cent national television reach.
- iii) Public disclosure would be required when a media outlet reports on the activities of a cross held entity.

c) Regional services protections

- i) A legislated requirement would be established for the continued imposition of licence conditions in key regional commercial television markets to provide minimum levels of content on matters of local significance.
- ii) ACMA would continue to ensure there is genuine competition between regional radio licensees through the requirement that, following the sale of a commercial radio licence, if the program format of that service changes from one of broad appeal to one of more limited appeal, it considers the allocation of a new commercial radio broadcasting licence in that licence area.
- iii) ACMA and the Government will continue to monitor the provision of local content in other regional television licence areas and on regional commercial radio services. The Government may consider extending licence conditions relating to levels of local content to those markets if local content levels decline materially.

d) Regulators' role

ACCC

- i) Media mergers would continue to be subject to the general mergers provisions of the *Trade Practices Act 1974*.
- ii) The ACCC would assess the competitive impacts of transactions, in accordance with the requirements of the *Trade Practices Act 1974* (TPA).

ACMA

- i) ACMA would oversee the operation of the *Broadcasting Services Act 1992* in relation to media transactions to ensure they comply with the 'minimum number of media groups' requirement and the licence and reach limits.
- ii) ACMA's enforcement powers under the *Broadcasting Services Act 1992* would be enhanced to enable it to make more timely and proportionate responses to industry activity.

e) Timing

- i) Media ownership reforms could take effect following automatic changes to the regulatory framework in 2007 that would also allow new licences for digital services on reserved spectrum to be allocated.
- ii) Alternatively, media ownership reforms could be linked with the end of the simulcast period, in line with the Digital Action Plan.