

8 December 2017

Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email: commsmarketstudy@acc.gov.au

Dear Sir/Madam

Thank you for the opportunity to comment on the ACCC's Communications Sector Market Study Draft Report (Market Study).

About ASTRA

ASTRA is the peak industry body for subscription media in Australia. ASTRA's membership includes the major subscription TV operators, as well as more than 20 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

ASTRA's members deliver a diverse range of quality news, information, sport and entertainment programs to a broad cross-section of Australians. Our members are the leading innovators in Australian television, using new technology and business models to lower production costs and provide consumers with content wherever, whenever and however they choose.

One in three Australian households subscribe, along with millions more who watch subscription content in public venues.

ASTRA is concerned to ensure that regulation affecting the industry does not inhibit investment, innovation, productivity and job creation.

ASTRA comments

ASTRA wishes to confine its comments to proposed recommendation 27 of the Market Study which recommends that the radiocommunications regime explicitly recognise, and do more to promote, competition in relevant markets. ASTRA supports recommendation 27, however we take this opportunity to draw the ACCC's attention to our submission to the Government's draft Radiocommunications Bill 2017 and associated consultation papers, in which ASTRA highlighted its concerns regarding both favourable free-to-air (FTA) access to spectrum and the secondary trading and sharing of free-to-air spectrum proposals.

ASTRA's submission to the draft Radiocommunications Bill and associated papers argues that the Broadcasting Spectrum consultation paper included proposals constituting further regulatory 'gifts' for FTA broadcasters, without adequate justification or explanation of why the regulatory playing field should be further weighted in favour of just one section of industry in this way.

ASTRA's overriding concerns regarding the treatment of FTA spectrum within the proposed new radiocommunications regulatory framework are that the Broadcasting consultation paper:

1. Did not address any of the issues relating to the continued favourable treatment of FTA broadcasters arising from certainty of access to spectrum at a discounted price. This treatment is inconsistent with the treatment of all other spectrum users who are not guaranteed access to spectrum and, if successful in gaining access to licensed spectrum, pay a market determined rate to access that spectrum. The provision of regulatory protections to FTA broadcasters does not consider the overall impact of this inequitable system on consumers and other industry participants, given the competitive nature of spectrum allocation in Australia.
2. Proposed sharing and secondary trading of spectrum used by FTA broadcasters, without any discussion of the competitive impact of these proposals on industry and other users. Further, no consideration was given to the potential alternative uses of any spectrum released through efficiencies, and where the value of freed up spectrum would eventually reside – with Government or with the FTA broadcasters themselves. ASTRA's firm view is that spectrum no longer required to transmit the current Freeview platform should be returned to the public and put to its highest value use.

ASTRA reiterates these concerns regarding the treatment of FTA spectrum and in light of recommendation 27 of the Market Study, considers that they should be a key consideration for the ACCC when considering competition in relevant spectrum markets.

Please refer to ASTRA's submission to the draft Radiocommunications Bill for further discussion of these issues¹.

If you have any queries or would like to discuss the issues raised in this submission, please contact me (Holly.Brimble@foxtel.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Holly Brimble', written in a cursive style.

Holly Brimble
Policy and Regulatory Manager

¹ <https://www.communications.gov.au/sites/g/files/net301/f/submissions/2017-07-28-brimble-holly-final-astra-response-to-spectrum-reform-package-and-bill-28072017.pdf>