

## KEY POINTS

- The public policy intention of the ‘anti-siphoning’ scheme is to ensure free-to-air (FTA) broadcasters have an opportunity to acquire broadcast rights for sporting events of national importance or cultural significance.
- The scheme prohibits subscription television (STV) licensees from acquiring broadcast rights to listed events unless a FTA broadcaster has first acquired them.
- Australia’s anti-siphoning list – at more than 1000 events – is the longest and most draconian in the world. It includes international events which are not similarly regulated even in their host country.
- The anti-siphoning provisions directly limit competition between FTA broadcasters and STV for a wide range of sports content, shifting the balance of negotiating power in favour of FTA networks.
- ASTRA’s proposed reforms to the anti-siphoning scheme would encourage competition for sports rights, deliver more revenue to sporting bodies and reflect the public policy intent of anti-siphoning by ensuring a FTA broadcaster can acquire the rights to listed events.

ASTRA recognises the value that Australians place on being able to view major sporting events on television, and the public policy objective of the anti-siphoning scheme to ensure that events which are of national importance and cultural significance to Australians are televised for free to the general public.

However, the anti-siphoning scheme currently operates well beyond its original public policy intentions to the detriment of sports bodies, the competitors of the free-to-air (FTA) broadcasters and, ultimately, to the general public who are denied the full potential for innovation and choice that would flow from improved competition for sports broadcast rights.

### Problems with the current anti-siphoning scheme

The anti-siphoning regime operates by use of a mechanism that effectively establishes the FTA networks as gatekeepers for all broadcasting rights. By preventing a STV licensee from acquiring the STV rights to a listed event until the FTA rights have been acquired (or the event has been removed from the list), the anti-siphoning scheme effectively gives FTA networks the right to determine what events can be shown by their competitors.

This mechanism reduces the extent of competition (and ultimately the price achieved) for broadcast rights, impacting on the revenue that sporting codes can generate to re-invest in their sports at both the grass roots and elite levels.

It also reduces the amount of sport on television by, for instance, denying subscription television the right negotiate broadcasting rights directly with less popular listed sports that may be overlooked by FTA broadcasters and, further, by limiting the extent to which

subscription television may broadcast the same event in competition with a FTA broadcaster, perhaps differentiating its coverage based on the quality of a broadcast or the depth of analysis provided.

The detrimental impact of the anti-siphoning list is extensive. The current list includes more than 1000 events that could not reasonably be regarded as having national importance and cultural significance to Australians, including the English FA Cup Soccer Final, the US Masters golf tournament, the US Open tennis tournament, and Twenty20 Cricket.

### **ASTRA's proposal for reform**

It is possible to construct an anti-siphoning regime which protects the viewing public's right to watch listed events free of charge without also conferring on FTA broadcasters a set of protections that distort the market, deprive codes of revenue and reduce the overall amount of sport on television.

ASTRA proposes two basic reforms:

1. Reduce the length of the anti-siphoning list so that, as in other countries, it is limited to events that are truly of national importance and cultural significance, such as the Melbourne Cup, the Bathurst 1000, an agreed number of AFL and NRL matches each round as well as finals, and certain other significant events. The removal of less significant events would not necessarily remove them from FTA television; rather, they would appear on FTA television when broadcasters successfully bid for them on an open market. This would frequently be the case because sporting codes will always place a high value on broad exposure to FTA audiences.
2. Put power into the hands of sporting codes by enabling them to sell STV rights directly to STV broadcasters without needing to wait for the FTA rights to be acquired. This would enable sporting bodies to determine for themselves how to balance revenue and exposure, and would of itself have no bearing on the ability of FTA networks to buy FTA rights (or even exclusive broadcast rights) and broadcast events if they wished.

These reforms would enable an STV licensee to acquire STV rights for a listed event without having to wait for a FTA broadcaster to acquire rights. The reforms would not prevent a sporting body from offering exclusive rights to an FTA broadcaster if it wished; nor prevent an FTA broadcaster from choosing to compete against STV by broadcasting the same event for free. This arrangement would encourage competition for sports rights, deliver more revenue to sporting bodies and reflect the public policy intent of anti-siphoning by ensuring a FTA broadcaster can acquire the rights to listed events.

FTA broadcasters are already in a strong negotiation position in relation to their direct competitors without additional regulatory protection. Were that protection to be relaxed, many sports organisations would continue to prefer the wide exposure provided by FTA television broadcasts, while FTA broadcasters would continue to enjoy the competitive advantage that comes from the ability to attract larger audiences and advertising revenues.

The purpose of the anti-siphoning regime has never been to ensure FTA broadcasters have exclusive rights to listed events – it is to ensure listed events are available to the public on FTA television. ASTRA's reforms would maintain this public policy intent of the regime while increasing competition for sports broadcast rights. ASTRA's reform proposal strikes an appropriate balance between protecting the public interest, while enabling sports bodies to maximise their revenue through a more open and competitive rights bidding process free of unnecessary regulatory intervention.