26 June 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
Parkes ACT 2600

Dear Review Panel

Response to Competition Policy Review Issues Paper

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to comment on the Competition Policy Review Issues Paper (the Issues Paper).

About ASTRA

ASTRA is the peak industry body for subscription television (STV) in Australia. ASTRA's membership includes the major STV operators, as well as over 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.

In 2012-13, STV invested around $700 million in Australian content production, employing 6600 Australians and adding $1.6 billion to the Australian economy.

ASTRA believes that consumers are best served by an open and competitive marketplace that encourages investment and innovation. This means reducing the amount of sector specific and market distorting regulation to a minimum. ASTRA's submissions on both sector-specific competition issues and general competition law matters are set out below.

Policy settings that impede competition in the broadcasting sector

The Issues Paper seeks feedback on reforms to encourage competitive behaviour and remove regulations and restrictions that impede competition. While we acknowledge that many of the issues that affect ASTRA's members specifically relate to communications and media policy settings determined in the Communications portfolio, we nonetheless make the following recommendations:

- ***Reform the anti-siphoning regime, which limits competition for sports rights***

  Competition for sports broadcast rights drives innovation and choice to the benefit of consumers, while increasing the potential revenues for sports bodies to re-invest in their sports communities. Despite this, the ability to acquire sports broadcast rights in Australia is restricted by the so-called 'anti-siphoning regime' which directly limits competition between broadcasters for a range of sporting events. The list of events subject to the scheme is longer than any other under similar schemes anywhere else in the world. To promote competition and deliver better results for viewers, sporting codes and grassroots participants, restrictions on the acquisition of sports broadcast rights should be minimised.

- ***Standardise the allocation and pricing of broadcast radiofrequency spectrum***

  Like telecommunications companies, STV providers pay market rates for the satellite capacity they acquire to deliver their television services. By contrast, the price of access to the terrestrial radiofrequency spectrum used by commercial free-to-air (FTA) broadcasters is calculated by reference to the revenue generated by that broadcaster. For parity between sectors, this spectrum should be subject to market-based pricing like all other spectrum.

- ***Lift regulatory barriers to entry to the free-to-air television sector***

  While STV and online providers of audio-visual content are subject to competition from new entrants at any time, the allocation of new commercial FTA television licences in the broadcasting services bands is prohibited under broadcasting legislation. Restrictions on entry to the FTA sector should not exist.

- ***Review inconsistencies in the application of captioning regulations***

  Competition in the audiovisual content market is maximised when regulations that impose costs are applied proportionately across sectors. The provision of television services with closed captioning is a case in point. While ASTRA acknowledges the importance of providing captions for the Deaf and hearing impaired community, we note that STV is subject to a disproportionate regulatory burden:

  - **70 STV channels** must currently providing captioning, and while STV captioning levels are legislated to rise over time until **all** STV channels provide **100%** captioning **24 hours a day**;
  - Conversely, from 1 July 2014 captioning obligations on commercial FTA broadcasters will remain static at **75%** of programming on only **one** primary service, with no requirement to provide captions on secondary channels (except for repeats).

General competition law matters

The regulatory approach to 'markets'

ASTRA wishes to make a general point about the international context in which our members do business. STV platforms, and the companies that provide channels that are broadcast on those platforms, compete to acquire audiovisual content in highly competitive international markets. The rise of the internet has seen the number of competitors in the audiovisual content market grow every year. As the number of firms offering consumers content in Australia grows, so too does the competition for rights to show programming in this territory.

ASTRA submits that in examining conduct within a market, it is important that both competition policy and regulators such as the Australian Competition and Consumer Commission (ACCC) recognise the global context in which ASTRA members and other Australian media companies operate.

Third line forcing

ASTRA submits that third-line forcing provisions in the *Competition and Consumer Act 2010* (CCA) should be amended to introduce a competition test.

Retaining an absolute prohibition on third-line forcing fails to recognise that such conduct is, in very many cases, beneficial to consumers and drives competition. Under current arrangements, firms must obtain authorisation for third-line forcing conduct, even when the

conduct is obviously in the consumer's best interest—such as where the firm seeks to provide consumers with a discount on the cost of a product or service or a rebate.

Clearly, the resources of the firm and the regulator would also be saved where authorisation was not required in all instances of third-line forcing.

Resale price maintenance

ASTRA similarly submits that the resale price maintenance provisions of the CCA would operate more effectively if they were amended to include a competition test, rather than acting as a per se offence.

ASTRA believes that allowing the imposition of a minimum retail price (where such conduct does not have a purpose or effect of substantially lessening competition) would enable a fair return on the investments of ASTRA members.

Misuse of market power

Finally, ASTRA submits that the misuse of market power provisions of the CCA should not be amended to introduce an effects test.

Our members are concerned that if an effects test is introduced to section 46 of the CCA firms may be unduly risk averse because they cannot reliably predict or control the *effect* of their conduct. This may mean that consumers are denied compelling offers, discounts or rebates because of such uncertainty.

Accordingly, ASTRA submits that it is appropriate that it remain a requirement of section 46 that an anti-competitive *purpose* be proven in order to establish a misuse of market power.

Please feel free to contact myself, or Simon Curtis, Policy and Regulatory Affairs Manager, on (02) 9776 2684 if you wish to discuss further anything in the above.

Yours sincerely

Andrew Maiden
CEO