

A Survey of the A.B.T.'s Adelaide Television Licence Renewal Report

Some eight months after hearings into renewal applications for the renewal of the licences for Adelaide's three commercial television stations the Australian Broadcasting Tribunal ("ABT") has released its report.

The licences for SAS-10 and NWS-9 have been renewed for the maximum period of three years. The licence for ADS-7 has been renewed for two years and six months. The Tribunal stated that the shorter term of renewal of the licence for ADS-7 was based on its findings that the licensee's performance in the area of children's programs had not been satisfactory, that the licensee had failed to demonstrate that it had sufficiently considered and catered for the needs of the hearing impaired in the Adelaide community and that it had failed to adequately demonstrate a clear relationship between its information gathering processes, its information analysis processes and its program decisions.

The Adelaide licence hearings were of particular interest because they were the first time in a major metropolitan market in which the Tribunal tested the undertaking given in accordance with s86(10) of the Broadcasting and Television Act 1942 ("the Act") relating to the provision of an adequate and comprehensive service in accordance with the ABT's Policy Statement number 6 ("POS-06"). The ABT issued POS-06 in December, 1983. It outlined the principals which it would apply in respect of that part of the undertaking.

The Tribunal noted in its report the argument raised by the licensees that as the issue of POS-06 was so late in the licence period its usefulness as a guide in the manner in which the station should approach the assessment of compliance of the undertaking was diminished. This was rejected by the Tribunal, particularly in view of the fact that the section had been in the Act long before POS-06 was released.

Adequate and Comprehensive:

The Tribunal noted that the Australian television industry was a regulated oligarchy rather than a free market and thus market place forces could not be solidly relied upon to satisfy the public interest. Accordingly, the adequate and comprehensive undertaking was introduced.

It noted that the Adelaide licensees had put to them the view that the McNair Anderson rating survey, when interpreted by an experienced programmer provided extensive feed back about programming preferences and varying habits of the Adelaide community. However, the Tribunal said that because market forces could not operate efficiently in the television context:

- (a) a mass audience could be divided by providing similar programming; and

- (b) a lack of direct payment for view meant that the market does not necessarily reflect preferences.

Thus it considered that the McNair Anderson services were unreliable for the purpose of ensuring the provision of adequate and comprehensive services.

The Tribunal said that it was clear from the working of the adequate and comprehensive undertaking that ascertainment was the rock upon which the undertaking was built. It involved two main aspects, gathering information about the circumstances of the market and applying this judgment when making program judgments. The first task was defining the geographical boundaries within which the community resides. Then it was necessary to obtain an understanding of the goals and expectations of various sections of the community. The Tribunal found that very little material in relation to this was placed before it by the licensees.

The three licensees had conducted joint research which the ABT found was narrow in its focus. Its questions related to program type, viewing and preference and so limited insights on the broader range of interests of the Adelaide communities. It also commented on the fact that the study was made at the end of the licence period. Accordingly, its findings could not have influenced the decision making in relation to the existing television service.

ADS-7 requested the ABT to issue detailed guidelines on ascertainment. The Tribunal declined to do so because of the following:-

- (a) the approach was contrary to the general complaint of the industry that the Tribunal was too interventionist;
- (b) it was within the capabilities of the stations to improve upon their current practices; and

(c) the Tribunal did not regard market research and other forms of ascertainment as ends in themselves, but rather as tools.

The Tribunal said that in making a judgement about the adequacy and comprehensiveness of a particular service the following factors should concern it:-

- (a) whether the licensee is properly informed about its market;
- (b) whether the licensee is capable of analysing and applying the information;
- (c) the soundness or otherwise of the process by which decisions about programming were made;
- (d) whether or not all services compare to those provided in similar markets;
- (e) evidence of any significant public concern within the areas of programming; and
- (f) the way in which resources have been allocated to the acquisition and production of programs, bearing in mind the nature of the market.

Provision of Australian Programs and Encouragement of Australian Resources:

The second part of the undertaking given by the licensees is in relation of the provision of Australian produced programs and the encouragement of the use of Australian creative resources in connection with the provision of programs. The Tribunal noted that some licensees had relied solely on compliance with the ABT's Australian Content requirements as ensuring fulfilment of this part of the undertaking. The Tribunal noted that the information which it would have regard to in assessing compliance is as follows:-

- (a) involvement in local production of the station's own news.
- (b) contribution to other Australian television productions;
- (c) involvement in local production by stations in providing news for other stations;
- (d) contribution to Australian television productions;

(e) involvement in the development of television scripts and new program formats;

(f) involvement in co-productions of Australian film, television and other creative productions;

(g) support given to local film production and theatrical companies;

(h) extent of exposure given to the local film industry;

(i) employment of various categories of creative and technical personnel in conjunction with program production, including employment of new talent such as graduates of specialist production and media courses; and

(j) involvement in the cultural and creative life of the local community including assistance and exposure given to particular events, exhibitions, festivals etc.

It then went on to deal with each of the stations. The main common feature was criticism of means of ascertainment and the application of this to program decisions. Set out below are the ABT's comments relating to ADS-7, which are particularly important in view of the reduction of its renewed licence period.

ADS-7

(a) Children's Programs:

During "C" time ADS-7 had telecast only one Australian produced program "Wombat" and several old animal story programs such as "Lassie" and "Flipper". It had stated at its previous licence renewal that it had a policy of repeating "C" programs on Saturday mornings. This had been discontinued when the children's television standards were introduced in July last year. The replacement programming was cartoons, movies and sport. In making the decision to change the Saturday morning programming the ABT said that it did not appear that the interests of the Adelaide community were at all carefully considered by ADS-7. During the licence period ADS-7 had also disbanded its children program production unit. At its previous licence renewal particular attention had been drawn to this unit.

The Tribunal said that whilst the transmission of "C" classified programs by a licensee ensured strict compliance with the children's television standards, such transmission did not necessarily indicate that the licensee was catering to the needs and interests of the children in the community it was licensed to serve. For it to be demonstrated that those interests were adequately served it must be established that a licensee knows and understands the nature of those needs and interests. The Tribunal was of the view that the transmission by ADS-7 in programs such as "Lassie" and "Flipper" was illustrative of the lack of the effort required by the licensee of a major commercial television station. It also found that ADS-7 had failed to demonstrate any cogent strategy with regard to its provision of children's programs. It failed to explain the processes whereby its programming in this area was seen to be suitable to satisfy the needs and interests of the children of Adelaide, or if any alternative program choices had been explored by ADS-7 in the light of the recent unpopularity of the "C" programs transmitted by it.

(b) Close Caption Service:

ADS-7 did not transmit any sub-titled programs, although the program "Sons & Daughters" was available in sub-titled form from ATN-7. ADS-7's response to the submission from the Australian Caption Centre was that it did intend to introduce a close caption service, but had needed the funds elsewhere. The ABT said that ADS-7 had not properly considered the interests of the hearing impaired members of the Adelaide community. It did not accept that the introduction of a close caption service should have waited on the expenditure of funds on other areas of the licensee's operation. Its view was that the licensee's commitment to the provision of an adequate and comprehensive service should have caused the licensee to make resources available not only for improving its transmitter facilities and the replacement of the outside broadcasting unit, but also as a high priority, the introduction and proper technical maintenance of a close caption service for the benefit

of hearing impaired members of the community which it was licensed to serve. In the event that the resources of the licensee prevented it from providing an adequate and comprehensive service the Tribunal said that it would be forced to carefully consider the extent to which the licensee continued to possess the financial capabilities necessary to effectively operate the station.

(c) Ascertainment:

ADS-7 gave evidence that its ascertainment procedures included direct contact with its varying audience, McNair Anderson rating surveys and specifically commissioned research. Unlike the two other Adelaide licensees it did not have an advisory or ascertainment committee to assist in programming decisions. Three pieces of research had been commissioned directly by ADS-7, together with the joint research of the other two Adelaide stations. The ABT came to the conclusion that ADS-7 had not been sufficiently active in researching the needs and interests of the Adelaide community during the licence period under review. It had apparently transmitted the programme "Wombat" (which is produced in Brisbane) on the assumption that it was suitable for an Adelaide children's audience, on the assumption that the needs and interests of that audience would be identical or similar to those in Brisbane. The ABT stated that a licensee cannot rely on such assumptions. In a market such as Adelaide it requires specific and effective research into such matters. In reference to the licensee's reliance on McNair Anderson surveys the Tribunal noted the apparent inertia of ADS-7 in the face of poor "C" time ratings and the lack of rating surveys during the summer period.

Basing its conclusion on the three areas of children's programming, provision of services to the hearing impaired and lack of a clear relationship between information gathering and program decision making, the Tribunal was not convinced that ADS-7 had provided an adequate and comprehensive service during the period of the licence. As this was the first time in which the undertaking in re-

lation to adequate and comprehensive service had been tested in a competitive market the ABT was prepared to give ADS-7 the benefit of any doubt. It found compliance with the second level of the undertaking in relation to encouragement of Australian programs and it also was satisfied that the applicant continued to possess the financial and technical capabilities to effectively operate the station. Taking all these considerations into account the Tribunal was satisfied that the renewal of the licence accorded with the public interest.

In deciding on the length of time of renewal the Tribunal referred to its POS-05 - renewal of a licence for less than the maximum period. The two main factors referred to in that policy statement which were relevant here were the need for an earlier review of performance of the station and the need for a form of sanction to be imposed.

The ABT said that the circumstances did not justify a renewal for the full term. If the licence was renewed for the full term it would not be sufficiently clear to the licensee that the deficiencies indicated were significant ones, which required positive correction. Accordingly, the licence was only renewed for two years and six months.

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Bill of Rights...

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- to pay for the assistance;
- (d) to have adequate time and facilities to prepare a defence;
 - (e) to be present at any proceedings relating to the offence and to present a defence;
 - (f) to examine the witnesses against the person;
 - (g) to obtain the attendance of, and to examine, witnesses for the person;

- (h) to have the free assistance of an interpreter if the person cannot understand or speak the language used in court;
- (i) not to be compelled to testify or confess guilt; and
- (j) in the case of a child to be dealt with in a manner which takes account of the child's age.

Article 27

No retrospective criminal offences or penalties

No person shall be convicted of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it occurred.

Article 28

Right of review of conviction and sentence

Every person convicted of a criminal offence has the right to the conviction or sentence reviewed by a higher tribunal according to law.

Article 29

No trial of punishment for the same offence

No person finally convicted or acquitted of a criminal offence shall be tried or punished again for the same offence.

Article 30

Rights when deprived of liberty

Every person deprived of liberty has the right to be treated with humanity and with respect for the inherent dignity of the human person.

So far as is practicable:-

- (a) accused persons shall be segregated from convicted persons, and shall be treated in a manner appropriate to their status as unconvicted persons;
- (b) accused children shall be segregated from accused adults; and