



Submission in response to
DITRDCA

**Anti-siphoning review –
Proposals Paper**

Public Version

September 2023

EXECUTIVE SUMMARY

1. Optus welcomes the opportunity to comment on the Government's Anti-siphoning review proposals paper (the proposals paper).
2. Optus considers that a model that best achieves the commercial outcomes for sporting codes, whilst ensuring Australians can watch nationally important and culturally significant sporting events is a model that supports a competitive, open market process for rights, while ensuring free delivery of these events to Australians who want to watch them. That is, model 1.
3. A competitive, open market process for rights maximises investment in sports development and grass roots programs, prize money and player salaries – which is particularly important for the further development of women's sport. Delivery obligations on providers can ensure that key events are available free to watch without being behind a paywall.
4. Optus has long recognised the value of women's sport and has invested in women's football coverage. Optus Sport's recent successful delivery of the 2023 FIFA Women's World Cup shows what is possible where rights acquisition is not restricted and what could easily be achieved under an outcomes-focussed model with delivery obligations, even with an expanded events list.
5. Optus' arrangements with Channel 7, community organisations, local councils, pubs, and clubs to support public live sites and free viewing options ensured the best outcomes for all. It realised the benefits of an open market competitive rights process, ensuring investment in and promotion of women's sport, and achieved delivery across multiple platforms with key matches available to watch for free.
6. This would be achievable under a model focussed on delivery outcomes (model 1). The Government's concerns in the proposals paper about such a model are, in Optus' view, somewhat overstated. It is not online providers who are the most likely to face technical or financial limitations in relation to multi-event tournaments or matches, but traditional national and commercial broadcasters. Such an approach (that also allows joint bids or sub-licensing arrangements) would assist in supporting the long-term sustainability of national and commercial broadcasters.
7. The Government's preferred approach – to restrict streaming services from acquiring online rights until national or commercial broadcasters have acquired broadcasting rights or an event is delisted – entrenches the anti-competitive impacts of the existing regime and does not maximise the benefits to sporting organisations, sports development, and professional players.
8. It further places events on an expanded anti-siphoning list at risk of no, or poor, coverage if national/commercial broadcasters do not acquire broadcasting rights, as events are currently not delisted until 26 weeks before the event. This period of time does not leave anywhere near enough planning or preparation time to ensure successful delivery of the event, from either a financial or operational perspective. This would undermine the very reason for these events being included on the list in the first place.
9. The Government should consider the best approach that achieves the following:
 - (a) maximises benefits to sports on the events list;
 - (b) ensures Australians have free access to watch nationally important and culturally significant events.

10. At the very least the Government should ensure the delisting period is sufficient at least 78 weeks (18 months) to support realistic delivery of events on the list.

SPECIFIC COMMENTS

11. The proposals paper puts forward three models for consideration:
- (a) Model 1 would be an outcomes-focussed approach with no restrictions on the acquisition of rights but instead availability and coverage obligations.
 - (b) Model 2 would prevent content services (such as a streaming service) from acquiring a right to provide coverage of a listed event to audiences in Australia until a national/commercial broadcaster has acquired a right to televise the event on a broadcasting service or the event is delisted.
 - (c) Model 3 goes further than model 2 and would prevent a content provider from acquiring rights until a national/commercial broadcaster has both a right to televise the event on a broadcasting service and online rights for a content service unless the event delisted.¹
12. In considering these three models, the Government has the following comments:
- (a) While the Department considers the model 1 approach might be suitable in the longer term, it does not consider the technology and market conditions in Australia as mature enough to enable the adoption of this model in the near-medium term, as it argues take up of broadband services is inconsistent across Australia.²
 - (b) The Department considers model 2 less complicated to implement than model 1 and acknowledges that it would adversely impact sports bodies and online streaming services. Content service providers would have unimpeded access to rights, once broadcast rights are acquired by TV broadcasters or an event is automatically delisted. It states that national/commercial broadcasters would have no advantage in relation to acquiring non-broadcast rights as they would need to compete with content service providers.³
 - (c) The Department considers model 3 would be an expansion on the scope of the anti-siphoning scheme and provide national/commercial broadcasters with a significant commercial advantage. This model would exacerbate a number of acknowledged concerns and risks with the current anti-siphoning scheme.⁴
13. The Department indicates its preferred approach is model 2. This, along with the proposed expansion of the anti-siphoning events list, raises a number of concerns.
14. Optus considers that the Department's concerns about model 1 are somewhat overstated and unfounded, particularly given the highly successful online and broadcast delivery arrangements implemented for the 2023 FIFA Women's World Cup.

¹ DITRDCA, Anti-siphoning review – Proposals paper, August 2023, p. 26.

² DITRDCA, Anti-siphoning review – Proposals paper, August 2023, p. 36.

³ DITRDCA, Anti-siphoning review – Proposals paper, August 2023, p. 41.

⁴ DITRDCA, Anti-siphoning review – Proposals paper, August 2023, pp. 45-46.

15. Optus submits the Department has not fully considered how sports rights are sold, the positive impacts that can come from open market processes, and whether adopting an anti-competitive model (the Government's preferred model 2) with an expanded events list will be workable in practice, particularly given the current delisting period.
16. Optus' detailed comments are set out below.

The concerns with model 1 are overstated

17. The Department has a number of concerns with proposed model 1, including:
 - (a) That the technology and market conditions in Australia are not mature enough to enable the adoption of model 1 in the near-medium term because the take up of broadband services is inconsistent across Australia;
 - (b) The indirect monthly cost of broadband services is a hurdle to take up of broadband services, and cost is also a factor to the take up of online streaming services;
 - (c) That service capabilities of online services are unable to replicate linear broadcast transmission.⁵
18. However, Optus considers these concerns are overstated and that the Department has failed to fully consider how a pro-competitive, delivery-focussed model could work in practice.

Technology and market conditions are mature enough to support model 1

19. The Department acknowledges that the NBN and mobile networks cover more than 99% of the Australian population,⁶ noting that Telstra's 4G mobile network covers 99.4% of the population and Optus' 4G mobile network covers 98.5% of the Australian population.⁷ However, the Department is concerned that 6.82% of Australians have no home internet connection that 8.51% of regional Australians and 11.71% of Australians over the age of 75 had no home internet connection.⁸
20. The Department's concerns that take up of home internet connections of more than 93% is insufficient to support model 1 suggests the Department's threshold before it would consider market conditions sufficiently 'mature' enough to support model 1 is simply unreasonably high. While it is estimated around 43% of the Australian population

⁵ DITRDCA, Anti-siphoning review – Proposals paper, August 2023, pp. 33-36.

⁶ DITRDCA, Anti-siphoning review – Proposals paper, August 2023, p. 29.

⁷ We note on page 33 of the Proposals paper the Department states the Optus network reaches 97.3% of the Australian population. The link at footnote 105 appears to be to an old cached page of the Optus website with out of date information. The Optus 4G mobile network covers 98.5% of the Australian population: ACCC, Reasons for Determination Application for merger authorisation lodged by Telstra and TPG in respect of the proposed Multi-Operator Core Network commercial arrangements and spectrum sharing Authorisation number: MA1000021, 21 December 2022, pp. 33-34. Available at: <https://www.accc.gov.au/public-registers/mergers-registers/merger-authorisations-register/telstra-corporation-limited-and-tpg-telecom-limited-proposed-spectrum-sharing>

⁸ DITRDCA, Anti-siphoning review – Proposals paper, August 2023, p. 34.

watched the Matildas versus England semi-final at the recent Women's World Cup this is still a long way short of 93% of the population.⁹

21. Broadcasting technology also experiences challenges in servicing the most remote of Australians. The Viewer Access Satellite Television (VAST) program supports access to television services for Australians in regional and remote locations where reliable television broadcast reception is not available. It delivers satellite television to around 200,000 homes and businesses¹⁰
22. If those Australians who do not have a home internet connection (noting also that Australia currently has 28 million 4G & 5G mobile services¹¹ which the Government describes as 'world class'¹²) would like to obtain a high-speed internet connection, the Universal Service Guarantee ensures they have access to broadband services via the NBN.¹³

Internet services support a range of critical activities and costs are not prohibitive

23. It is increasingly acknowledged that telecommunications and internet services play an essential role, supporting not just the delivery of online entertainment and news but supporting social, educational, telehealth, banking, investment and entrepreneurial, and government and business activities.
24. The Minister for Communications and Chair of the ACMA recognise telecommunications services as being essential services and the industry is regulated as such. The ACMA Chair noted that it is not "up for debate any more than telco services are essential services for all".¹⁴ The Minister has noted, "[t]elecommunications are an essential part of everyday life and staying connected is no longer a luxury – it is a necessity to support education, work and access to all critical services."¹⁵

⁹ Australian Financial Review, 'Matildas smash ceiling as total TV audience soars past 11m', 17 August 2023, <https://www.afr.com/companies/media-and-marketing/matildas-free-to-air-tv-audiences-eclipse-7m-for-first-time-in-decades-20230817-p5dx7q>

¹⁰ <https://www.infrastructure.gov.au/media-centre/publications/viewer-access-satellite-television-vast-fact-sheet>

¹¹ ACCC, Communications report 2021-22, Dec 2022, p. 12. https://www.accc.gov.au/system/files/22-71RPT_Communications%20Market%20Report_FA.pdf

¹² Universal Service Guarantee (USG) – Fact sheet, September 2021. <https://www.infrastructure.gov.au/sites/default/files/documents/universal-service-guarantee-usg-3september2021.pdf>

¹³ Universal Service Guarantee (USG) – Fact sheet, September 2021. <https://www.infrastructure.gov.au/sites/default/files/documents/universal-service-guarantee-usg-3september2021.pdf>

¹⁴ Telecommunications (Financial Hardship Industry Standard) Direction 2023 – Explanatory Statement, p. 1. <https://www.legislation.gov.au/Details/F2023L01188/Explanatory%20Statement/Text>. Speech by ACMA Chair, Comms Day Summit 2023, <https://www.acma.gov.au/publications/2023-05/speech/speech-nerida-oloughlin-psm-acma-chair-commsday-summit-2023>.

¹⁵ Minister for Communications, Albanese Government to improve safeguards for telco consumers experiencing financial hardship, 6 July 2023, <https://minister.infrastructure.gov.au/rowland/media-release/albanese-government-improve-safeguards-telco-consumers-experiencing-financial-hardship>.

25. There are a range of Government programs and policies aimed at ensuring internet services for low income and/or regional/remote users are as affordable as possible. This includes measures such as the Regional Broadband Scheme, where industry subsidises the cost of NBN connections in regional/remote areas, the Government's Regional Connectivity Programs and School Student Broadband Initiative.
26. The Government is also in a unique position to be able to influence the NBN's products. For example, the Minister for Communications recently announced new uncapped NBN satellite broadband services have been well-received and taken up. In announcing this, the Minister noted that "whether you live in a capital city or in the bush, access to fast, reliable and affordable broadband has never been more important".¹⁶ The benefits of such programs and action are significant when considering the broad range of activities that internet services support, their essential nature, and ameliorate concerns about ongoing costs of internet services.
27. Notwithstanding the above, mobile services also offer a range of cost-effective options with the most affordable mobile broadband plans at around \$20 per month.¹⁷ The advertised price of mobile broadband plans has fallen by around 44% over 5 years.¹⁸

Streaming services deliver reliable, high-quality services

28. The Department also has concerns that service capabilities of online services would be unable to replicate linear broadcasting where transmission could occur to potentially millions of Australians. However, streaming services have clear incentives (even when supplying an event for free) to ensure that the service is technically capable of being delivered to a large audience.
29. Optus notes that the recent 2023 FIFA Women's World Cup is an excellent case study of the capabilities of streaming services, such as Optus Sport. Optus invested significantly in upgrading its content distribution infrastructure and scaling up capabilities in the lead up to the event. Optus anticipated significant interest in the Women's World Cup given Australia was a host nation and the Matildas are a well-performing team. There were no issues with Optus Sport's streaming service during the Women's World Cup, even when some matches are amongst the highest watched matches ever on Optus Sport. Optus Sport was also prepared to meet higher viewer demand, including for example, if Channel 7's broadcast experienced technical difficulties and was unavailable. Optus is confident it would have met any increased demand.
30. Optus Sport also scaled up its online capabilities so that the service could meet increased registration demands (although we note we suggested in our previous submission to the Anti-siphoning review that any listed events could be required to be made available not just for free, but, without registration). We note that Channel 7 adopted this approach and did not require registration with its 7plus service for the FIFA Women's World Cup.

¹⁶ Minister for Communications, media release, <https://minister.infrastructure.gov.au/rowland/media-release/thousands-take-new-uncapped-satellite-broadband-rural-and-regional-australia>

¹⁷ ACCC, Communications report 2021-22, Dec 2022, p. 14. https://www.accc.gov.au/system/files/22-71RPT_Communications%20Market%20Report_FA.pdf

¹⁸ ACCC, Communications report 2021-22, Dec 2022, p. 14. https://www.accc.gov.au/system/files/22-71RPT_Communications%20Market%20Report_FA.pdf

31. We also ensured the Optus mobile network and internet services had capabilities to meet increased demand during matches, so that Optus customers, regardless of how they watched the event, and event attendees, would have very reliable Optus services.
32. Streaming services such as Optus Sport can deliver High Definition (1080p) picture quality and use adaptive streaming technology, so that delivery can be adjusted depending on a viewer's internet connection.
33. Broadcasting technology faces more constraints when it comes to multi-match tournaments or events (such as, the Australian Open tennis tournament or the Olympic and Commonwealth Games) because there are limited FTA channels that can be used. There are far less technological limitations facing online content delivery which would allow streaming services to simultaneous events rather than broadcast delivery, which is limited by the number of available FTA channels.
34. Streaming service technology is continually improving and increased efficiencies and upgrades in compression technology sees much higher quality picture being delivered using less data. Online content delivery services that rely on subscriptions have clear incentives to ensure they provide a reliable, quality service, even when they are providing an event for free.

Model 2 may not be workable in practice

35. Optus is concerned the Department has not fully considered how sports rights are sold, the positive impacts that can come from open market processes, and whether an anti-competitive model with an expanded events list will be workable in practice, particularly given the current delisting period.

Model 1 achieves the benefits of a competitive open market rights process

36. Adopting a scheme that focuses on restrictions on acquiring rights (such as Model 2 or 3), instead of delivery obligations (such as model 1), entrenches an anti-competitive scheme that gives a significant commercial advantage and protection to traditional broadcasters.
37. While the Department asserts that proposed model 3 focusses on protecting 'broadcasters' and proposed model 2 is focussed on protecting 'broadcasting services', this is simply not the case. Model 2 also protects broadcasters – national and commercial broadcasters – because the broadcasting services protected under model 2 are only those services supplied by national/commercial broadcasters. That is, there are no other broadcasting services (such as, subscription broadcasting services) that are protected by model 2.
38. Further, the practical realities of the way rights are sold mean that national/commercial broadcasters are likely to receive a significant commercial advantage under the proposed model 2. Sports rights are mostly sold as a bundle, which could include both broadcasting and online rights being bundled together or rights to all matches in an international event (i.e., not just rights to matches featuring Australia). This could be a significant commercial advantage for those broadcasters as online providers would then have no opportunity to purchase online rights until the broadcasting rights are sold or events are delisted.
39. Optus believes that the Department has failed to fully consider the positive impacts that come from open market processes. Limiting competition and restricting acquisition of rights means there is likely to be less money going to sports bodies which uses that money in sports development, as prize money and for player salaries. For example,

Football Australia states it wants to invest money from their next rights deal back into their programs.¹⁹

40. Optus has long championed women's football and notes that when it acquired the rights to the 2019 FIFA Women's World Cup there was little interest from national/commercial broadcasters for those rights.²⁰ Optus' has had longstanding interest and investment in promoting women's football and our top football players in Australia.

The current delisting period could undermine overarching objectives

41. The Department has also failed to consider practical realities of acquiring rights and delivering content and the impact of the current delisting period with the preferred model 2.
42. Often Sports rights holders are concerned about reach and whether some games are available for free, and could, for example, include such matters as part of their bid requirements. Rights deals are also negotiated for multi-year or multi-tournament periods many years in advance. For example, Optus Sport acquired the rights to the 2023 FIFA Women's World Cup in 2021, almost two years ahead of the tournament.
43. This lead time allowed Optus to undertake a significant program of investment to upgrade its content distribution to ensure it delivered a high quality, reliable service for an event that Optus considered would have a high degree of interest. It also provided time for a sub-licensing arrangement to be negotiated with a commercial broadcaster and for Optus to prepare for delivery of the event. It allowed Optus sufficient time to secure production and presentation hosts and adequately plan programs to ensure its coverage was very high quality.
44. The increasing number of events on the anti-siphoning list and technological limitations of linear broadcasting will pose challenges to national and commercial broadcasters. This expanded list is likely to require significant incremental financial commitments from national/commercial broadcasters.
45. If national/commercial broadcasters are unable to accommodate all events on the anti-siphoning list (either financially or technically) broadcasting rights may remain unsold. For example, in the UK, the 2023 Women's World Cup was placed on their equivalent list in April 2022, requiring it to be shown on 'free-to-air', yet a rights deal was only agreed one month before the Women's World Cup started.²¹
46. Under the Government's preferred model 2, if national/commercial broadcasters did not acquire broadcasting rights, online providers would be restricted from acquiring online rights until 26 weeks (6 months) before the event under current delisting processes.

¹⁹ Football Australia chases record TV deal after Matildas success, 13 August 2023, <https://www.afr.com/companies/media-and-marketing/football-australia-chases-record-tv-deal-after-matildas-success-20230810-p5dvfw>

²⁰ 'A cultural moment': Optus Sport lands 2023 Women's World Cup broadcast rights'. 4 June 2021. <https://www.smh.com.au/sport/soccer/optus-sport-lands-2023-women-s-world-cup-broadcast-rights-20210604-p57y0a.html>

²¹ UK and other European nations call on FIFA and broadcasters to 'quickly reach an agreement' to show Women's World Cup, 31 May 2023. <https://news.sky.com/story/governments-call-on-fifa-and-broadcasters-to-quickly-reach-an-agreement-to-show-womens-world-cup-12893632> Threat of Women's World Cup blackout averted after terrestrial TV deal agreed, 15 June 2023. <https://www.theguardian.com/football/2023/jun/14/all-womens-world-cup-games-will-be-shown-live-on-terrestrial-tv>

47. The existing 26-week period will not be long enough to ensure successful delivery of the event, from either a financial or operational perspective. There are many aspects to successfully delivering high-quality coverage of an event.
48. The significant financial investment required for rights requires budgeting, planning, investment, and preparation potentially more than 18 months in advance. To assist in covering costs, advertising/sponsorship are often needed, which means advertising/sponsorship packages need to be made available to prospective advertiser/sponsors well in advance to fit in with their advertising and budgeting annual planning cycles.
49. In addition, substantial lead time is required for planning and execution of surrounding content (including supporting content and shows and studio hosting). The build and testing of bespoke digital platforms for an event (including mobile/smart TV apps) also requires anywhere from 6-18 months and booking and reserving capacity for broadcast feeds for international events often needs to be done more than 9 months in advance. All these aspects contribute to delivering high-quality coverage for Australian viewers.
50. Optus understands that even though the sub-licensing arrangements with Channel 7 for the 2023 Women's World Cup were agreed 8 months prior to the event it was challenging for Channel 7 to prepare in that period. Optus itself had two years in which to prepare for delivery of the Women's World Cup, and successfully delivered high-quality coverage of the event to Australian viewers.
51. No or poor delivery of events would undermine the Government's reasons for placing these events on the anti-siphoning list in the first place – i.e., to ensure events of national importance and cultural significance are widely available for free.
52. Therefore, if streaming services are restricted from buying online rights in circumstances where broadcasters have not taken up broadcasting rights, the Government must extend the delisting period to 78 weeks (18 months).