



Pay TV operator Australis did not breach the Government's anti-siphoning rules by acquiring rights to the Australian cricket team's tour of the West Indies, says the ABA.

Australis is not in breach

The ABA has decided Australis and its licensee acquired the rights to the West Indies cricket tour on 27 May 1994 prior to the publication of the Minister for Communication's anti-siphoning list. No other listed events are covered by this agreement.

In investigating the Windies matter, the ABA examined all documents relating to the acquisition and took formal evidence from a number of persons. The ABA also had to consider legal advice from all parties in order to allow Australis to fully present its case.

The ABA's final decision, announced on 6 March, was based on new evidence received on 27 February which was provided by parties to the negotiation of the rights. This material clarified the meaning of documents previously examined by the ABA. It also reversed the ABA's preliminary view of 20 January (which said Australis, on the basis of the information available at the time, appeared not to have acquired the Windies rights before 6 July).

'This was a one-off acquisition prior to the creation of the list,' said Mr Peter Webb, ABA Acting Chairman. 'The ABA is confident there were no other events acquired by Australis, or any company associated with it, prior to the gazettal of the Minister's list.'

The decision, released by the ABA as part of a written report, means Australis' two pay TV licensees, New World Telecommunications Pty Ltd

and Star Vision Pty Ltd, are free to show the Windies cricket without breaching any licence condition (this would have applied whether Network TEN had acquired the free-to-air rights or not).

Background

Test cricket matches and one day cricket matches involving the senior Australian representative team, whether played in Australia or overseas, are events covered by the notice gazetted by the Minister for Communications and the Arts on 6 July last year.

On 13 January 1995, the ABA began investigating whether New World Telecommunications and/or Star Vision had complied with the condition on the subscription television broadcasting licences held by them.

The condition prevents the licensees from acquiring rights to broadcast events specified in the notice of events issued by the Minister for Communications and the Arts on 6 July 1994, until a commercial or national broadcaster has acquired the rights or the Minister has removed the event from the notice.

New World holds satellite subscription broadcasting licence B and Star Vision holds 50 non-satellite subscription television broadcasting licences. Both companies are subsidiaries of Australis Media Ltd, the ultimate holding company of the Australis group.

The sports service currently

being broadcast on MDS under the name of Premier Sports Network is utilising the licences of Star Vision.

The Premier Sports Network sports channel is packaged together as a result of a joint venture between the Australis group and the US based Liberty Media/ Prime International group of companies.

In May 1994, Mr Rodney Price, Chairman of Australis, New World and Star Vision entered into an agreement to acquire the Australian television rights to broadcast the 1995 Australian cricket team tour of the West Indies. These are events which are specified in the notice issued by the Minister.

The rights were acquired jointly for Australis and the licensees from Trans World International, acting as agent for the West Indies Cricket Board of Control. Mr Price was assisted in the negotiations by senior management of Liberty Media/Prime International.

The ABA took evidence from all the parties to the negotiation and examined all documents associated with the acquisition.

On 27 February, new evidence from Mr William Sinrich, Senior International Vice-President/Trans World International (TWI), and Mr Mathew Tinley, Managing Director and Vice President/Prime International, made it clear that rights were acquired on 27 May not only by Australis, but also by its licensee companies.

If the licensee companies had not acquired the rights on 27 May, then a transfer of those rights from Australis to its licensees would have been necessary after 6 July 1994 when the Windies tour was gazetted by the Minister. This would have caused the licensees to breach the licence condition.

As a result of its extensive investigation the ABA found that Australis, New World and Star Vision jointly acquired the Australian television broadcasting rights to the event on 27 May 1994, as a result of the agreement entered into by Mr Price on their behalf.

The ABA is satisfied that the agreement is binding on the parties to the agreement. The reasons for this are set out more fully in the report of the investigation.

As a result of reaching this finding the ABA is satisfied that there has been no breach of the conditions on the licences of New World and Star Vision, because as of 27 May the Minister had not specified these events as being protected by the anti-siphoning provisions of the Act.

The condition relates only to the time of acquisition of rights and not to the actual broadcast of coverage of the events. As a consequence New World and Star Vision were free to broadcast coverage of the West Indies tour. □

See p.8 for further information about siphoning.