

SBS RESPONSE TO THE REVIEW OF THE ANTI-SIPHONING SCHEME CONSULTATION PAPER 6 DECEMBER 2022

Key Points

- The Special Broadcasting Service (SBS) welcomes the opportunity to comment on the Review of the Anti-Siphoning Scheme Consultation Paper (the Paper).
- Sporting events continue to hold a significant cultural place in Australian society, and when equitable access is provided to coverage of those events, sport's potential to bring communities together and to promote social cohesion is maximised.
- Despite far-reaching shifts in the media landscape, Australians continue to demonstrate their desire to access sporting coverage for free, and the public interest in ensuring widespread and equitable access endures.
- There is a strong alignment between SBS's public interest purpose in contributing to social cohesion, and the continuing potential for the scheme to maximise free coverage of sporting events which bring diverse Australian communities together to explore a shared sense of national identity.
- For these reasons, the anti-siphoning scheme continues to be a relevant intervention and an important form of public interest regulation. An unregulated market will not ensure free access.
- However, it is important that the scheme is reviewed and refreshed to ensure it appropriately reflects the modern media market and to ensure it remains effective in achieving its public interest objectives.
- The emergence of a wide range of paid media platforms which are not covered by the scheme, gives rise to a potential for the scheme's impact and efficacy to be significantly diluted. Access to these services is subject not only to a subscription fee, but also the cost of broadband access.
- It is therefore appropriate that consideration be given to an extension of the scheme to cover subscription video on demand (**SVOD**) and other online paid media platforms, to ensure the scheme can continue to effectively maximise the provision of free coverage of significant events.
- Aside from the broadcast of the FIFA World Cup, SBS has not been a significant participant in the market for the media rights to sports currently on the list. Accordingly, this submission does not provide detailed comments on the operation of the scheme or the legislative mechanism employed by the scheme, except to note that there is scope for simplification in relation to the latter.



- This submission examines the ongoing importance of the scheme, the need for its renewal and outlines SBS's contribution to sports coverage in Australia.

Recommendations:

- Anti-siphoning scheme maintained as an ongoing regulatory intervention which brings social, cultural and wellbeing benefits to Australians.
- Anti-siphoning scheme extended to SVOD providers to ensure the continuing effectiveness of the scheme.
- Restoration of FIFA World Cup finals matches, and the Tour de France to the anti-siphoning list and addition of elite women's sporting events.

About SBS

As Australia's most diverse broadcaster, SBS holds a unique place in the Australian media landscape, inspiring all Australians to explore, respect and celebrate our diverse world and in doing so, contributes to an inclusive and cohesive society. SBS is also the home of the National Indigenous Television (**NITV**) service.

Today, SBS is a modern, multiplatform media organisation with a free-to-air TV portfolio spanning six distinctive channels in SBS, NITV, SBS VICELAND, SBS Food, SBS World Movies and SBS WorldWatch; an extensive radio network providing over 60 communities with services in their own language; and an innovative digital offering, including SBS On Demand, available to audiences anytime and anywhere.

SBS's commitment to sport and sporting events

Given resourcing constraints, the rapid growth in the price of rights to premium sporting events, and the historic removal of certain events from the anti-siphoning list (such as the Tour de France and the majority of FIFA World Cup Finals matches), SBS does not participate extensively in the market for rights to events on the anti-siphoning list.

SBS is, however, currently providing exclusive coverage of the FIFA World Cup Qatar 2022™. Matches in this tournament involving the senior Australian team, as well as the final, are protected on the anti-siphoning list, though earlier matches from the finals rounds were removed when the list was last reviewed.

SBS's comprehensive, popular and free coverage, spanning across platforms, is a prominent example of the ways in which sporting coverage on free-to-air television can promote inclusion and equity for the world's largest sporting event, enabling all Australians can access and celebrate key moments. More than 2.15 million Australians¹ tuned in to watch Australia v Argentina, and as at 1 December, Australians have watched a total of 29.9 million hours of tournament content on linear television, and a total of 14.5 million hours digitally.² SBS On Demand has seen more than 800,000 new account registrations on the platform,³

SBS also provides coverage of a number of sporting events which previously were protected under the anti-siphoning scheme – in particular, the Tour de France cycling event and US Open Tennis finals. SBS's coverage of cycling also includes the Vuelta Espana, the Paris Roubaix, Giro d'Italia and the Australian Road National Championships (including live coverage of the elite men's and women's races, as well as the under-19 and under-23 events, para-cycling, and intellectually impaired and deaf categories).

¹ Viewers on SBS's linear primary channel. Source OzTAM, RegionalTAM

² Source: OzTAM (Metro, VPM), Regional TAM. BVOD excludes viewing under 15 minutes.

³ Source: Internal SBS data



However, SBS's contribution to sports coverage in the contemporary environment, is increasingly through a growing investment in under-represented sporting events, and comprehensive coverage and analysis of Australian sport from an Indigenous perspective on NITV.

In 2022, NITV launched *Feeding the Scrum*, a sports panel show featuring some of Australia's favourite NRL players. This new series joined NITV's AFL panel show, *Yokayi Footy* and the NRL panel show, *Over the Black Dot*. In addition, in FY22 NITV delivered over 180 hours of sporting events from communities across Australia, including West Kimberly Football, Big Rivers AFL and Men and Women's Field Hockey in Western Australia; Murri Carnival and Indigenous Football Festival in Queensland; Men's Rugby League and Tiwi Islands Football League Grand Final in the Northern Territory; Ella 7s Rugby Union in New South Wales; and the National Australian Softball Championships.

SBS delivers its extensive sports coverage across linear and digital platforms, uniting communities through shared passions and experiences. SBS On Demand can provide under-represented sports with a reliable and popular platform to deliver the events to the widest possible audiences, without the need and complexity of each individual sports federation having to establish and operate their own streaming services.

Enduring policy justification for the scheme

Whilst it is timely to review the justification for, and design of, the anti-siphoning scheme, it is clear that the underlying policy principles which support regulatory intervention are enduring, and remain as relevant today as when the scheme was first introduced.

The introduction of the scheme was in response to the likelihood of the broadcast rights to certain events being purchased exclusively by subscription broadcasters and the subsequent requirement for Australians to pay to access coverage of those events. This was considered undesirable on equity and access grounds, and also on the basis that Australians have traditionally had access to sporting coverage free of charge.

These considerations remain salient and relevant today, whilst subject to some evolution, and warrant a continuation of regulatory intervention.

Specifically, Australian audiences continue to place significance and high value in shared access to significant sporting events, demonstrated by the audience data cited in the consultation paper, which demonstrated that audiences for sporting events remain strong. The public interest considerations of equitable access to these shared experiences have not diminished over time. As noted above, viewing figures for the 2022 FIFA World Cup demonstrate significant levels of interest in free-to-air coverage on the part of Australian audiences. Since the tournament began on 21 November, SBS On Demand has drawn an average of almost 900,000 active viewers to the platform every day, with several days surpassing 1 million active views.⁴

In addition, there remains a likelihood that without regulation, exclusive coverage of significant sporting events would move to SVOD platforms (and subscription television). Indeed, since the commencement of the scheme there are enhanced possibilities for exclusive broadcast rights to be purchased by subscription-based platforms, given the entry into the market of a large number of (often well-resourced, multi-national) subscription video on demand providers since approximately 2015.

⁴ Source: Internal SBS data



As set out in the consultation paper, these platforms are either signalling an intention to acquire sporting rights, or are already actively participating in the market for such rights. Given that the restrictions in the anti-siphoning scheme do not apply to the SVOD providers, this gives rise to an increased likelihood of sporting content residing behind a paywall.

Whilst the subscription fees for SVOD services are generally less than those traditionally charged by subscription television broadcasters, it should be noted that in addition to the subscription fee charged for SVOD access, audiences are also required to pay for a premium, high volume broadband internet connection. This broadband option is not affordable or available to all Australians.

Given the fragmentation in the market for premium content brought about by the large number of SVOD services operating in Australia, it should also be noted that audiences will be compelled to hold multiple subscriptions in order to access the sporting events they are interested in, which further amplifies consumer costs. Sporting events that are currently only available on subscription are already fragmented across subscription service providers.

These enduring market conditions and access/equity considerations are clearly defined and support a continuation of regulatory arrangements which maximise free access to coverage of significant sporting events.

There are further access and equity considerations which logically support free access to coverage of elite sports when it is considered that federal and state/territory governments invest substantial amounts into these sports. For example, the NSW Government recently invested over \$800 million into the new Sydney Football Stadium,⁵ and \$360 million into the new Paramatta stadium,⁶ and the Federal Government announced \$635 million in spending on sport in the last Budget.⁷ Given the level of public investment into sport, it would appear incongruous to then place further financial barriers in place of the public accessing the 'return' on their investment. That is, it is important that the public have free access to coverage of sports being played in facilities they have funded through their taxes, or of athletes whose development they have helped fund.

In addition, SBS notes that the policy objectives underpinning the scheme are in broad alignment with SBS's public interest purpose to inspire all Australians to explore, respect and celebrate our diverse world, and in doing so, contribute to a cohesive society – not just those who can afford to pay for access. Sporting coverage, particularly of nationally significant events, can play a role in bringing diverse communities together and fostering a shared sense of identity and social cohesion.

Evolution of the scheme

As noted above, there are strong access and equity considerations in relation to sporting coverage which have endured over time, meaning that the anti-siphoning scheme remains a relevant and necessary intervention.

However, it is also undeniable that the media landscape and market for sporting rights have evolved significantly since the introduction of the scheme in the early 1990s.

It is appropriate that the scheme be modified to reflect these evolutions.

⁵ <https://www.ausleisure.com.au/news/sydneys-new-allianz-stadium-revealed-as-costing-874-million/>

⁶ <https://www.smh.com.au/sport/nrl/stadium-wars-have-begun-how-many-more-shiny-new-structures-does-the-nrl-need-20220428-p5agpj.html>

⁷ <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/budget-october-2022-23-strengthening-medicare>



Of primary concern is the limited scope of the scheme, applying only to one kind of paid media platform – subscription television. This means that there are no controls in place to prevent the migration of sporting coverage of significant events to other paid media platforms (particularly SVOD providers).

As noted above, whilst subscription fees for SVOD services are often priced lower than those for subscription television, in order to access SVOD services, viewers must also purchase a broadband subscription. Multiple SVOD subscriptions are also often required to access a consumer's preferred content choices, compounding the costs to consumers.

Given the purpose of the scheme remains relevant (to maximise opportunities for free coverage of sporting events), the lack of application to increasingly dominant paid platforms (SVOD services) challenges the effectiveness of the scheme.

It would be consistent with the underlying policy objectives of the anti-siphoning scheme to consider an extension of the existing restrictions to other subscription media services.

The aim of the scheme should be that as many Australians as possible can access these sporting events for free, or at the lowest possible cost. While a premium broadband service is out of reach for many Australians, there are also an increasing number who do not have a free-to-air aerial and only access free media via their connected TV (noting the key issues in relation to the concurrent policy work underway on connected televisions). This cohort should not be compelled to pay an additional subscription fee to access these sporting events simply because of their mode of access. Any revised scheme should therefore treat AVOD/free streaming rights as analogous to broadcast rights, to ensure continued universal access across platforms.

Composition of the anti-siphoning list

In line with the underlying objectives of the anti-siphoning scheme, there are some modest amendments to the composition of the anti-siphoning list which would operate to maximise access for audiences to significant and important events, noting that sporting events, Australia's demographics and community interest in sports has evolved, both since the list was first developed and when it was last amended.

The 2017 removal of matches in the FIFA men's World Cup other than Socceroos matches and the final was not consistent with the imperative to maximise free access to significant sporting events, and should be reversed. At a minimum, all quarter-finals and semi-finals should be restored to the list, to ensure free-to-air broadcasters have priority access to the rights to these matches. The FIFA men's World Cup is the biggest single sport competition in the world, and free and universal access is also of particular importance to Australia's migrant communities, who retain links with the national teams of their originating countries and the increasing diversity of Australia as reflected in the latest census results. There are clear benefits for social cohesion when migrants to Australia can celebrate the progress of the Australian national team, and the national teams from the countries they migrated from.

SBS would also support the restoration of the Tour de France (and addition of the Tour de France Femmes) to the anti-siphoning list, given the strong participation of Australian riders in these events and their popularity with, and importance to, Australian audiences.

There are also strong grounds for the inclusion of elite women's sport on the anti-siphoning list, in particular the FIFA women's World Cup, Women's cricket, and the AFLW. High visibility for these sports plays a crucial cultural role in Australian society, providing role models and demonstrating pathways for young women and girls to become professional sportspeople.



As the consultation paper noted, access to sporting events on free-to-air media and visibility of role models also brings benefits to grassroots participation in sport, thereby supporting positive health outcomes. These impacts are maximised when coverage is made available on free-to-air television, in turn maximising the beneficial impacts of women's sport on health, access and inclusion.

Conclusion

Given the significant changes in the media industry and the market for sports rights, it is timely to consider the ongoing efficacy of the anti-siphoning scheme. In particular, the increasingly dominant position and purchasing power of SVOD platforms necessitates an examination of their place in the sporting coverage ecosystem.

However, there are some fundamental principles underpinning the scheme which have endured over time, relating to the social power of sport, and the public interest in ensuring free and equitable access to coverage for all Australians. There are strong and clear justifications for the continuation of the scheme, with appropriate enhancements to ensure it continues to be a relevant and effective regulatory intervention.