



10 March 2023

Atten: James Penprase

Assistant Secretary

Media Reform Branch

Online Safety, Media and Platforms Division

Department of Infrastructure, Transport, Regional Development,

Communications and the Arts

GPO Box 594

CANBERRA ACT 2601

Dear Sir/Madam

Proposal Paper: Prominence Framework for Connected TV Devices

The Consumer Electronics Suppliers Association (**CESA**) welcomes the opportunity to make a submission on the above Proposal Paper.

CESA is the premier national, industry body in Australia representing the consumer electronics industry. CESA members comprise major suppliers and retailers of consumer electronic products including the majority of TV suppliers to the Australian . Thus, CESA is the voice of television suppliers in Australia (**CESA TV Members**).

CESA TV Members understand the need for a viable Free To Air platform and appreciates the Government's social and cultural policy objectives to ensure that Australians can freely access quality local content.

CESA TV Members have in the past and will continue to give prominence to such platform however there are concerns that key elements of the prominence proposals in terms of its requirements and timeframes, demonstrates a fundamental technical misunderstanding, which make it impossible for CESA TV Members to implement.

It is therefore critical that a legislated prominence framework is done in a manner that is:

- (i) technically feasible within global platforms;
- (ii) in consultation with TV suppliers; and
- (iii) designed to achieve prominence and not control.

While each manufacturer differentiates their product based on consumer demands, most (if not all) believe that they give a reasonable degree of prominence to local broadcast. Changing the consumer proposition will have an impact in the market, likely change the level of competition and increase cost to the consumer.

CESA queries whether prominence is the real issue with a Free To Air Platform, and will the level of legislated prominence proposed:

- a) Deliver a **fair and equitable** platform that continues the level of device competition, and that does not impact on the manufacturers, retailers and consumer choice.
- b) Provide the consumer with an Australian and Global cultural experience
- c) Result in an unacceptable level of control creating barriers and increase the cost to the consumer.

Attached is CESA's Response to the Prominence Framework for Connected Devices.

Yours sincerely

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CESA'S RESPONSE TO PROMINENCE FRAMEWORK FOR CONNECTED TV DEVICES

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- 2) FTA BROADCAST PLATFORMS TODAY.**
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1) AUSTRALIAN PRODUCT AND MARKET

Background

From a single basic terrestrial platform through an antenna to a country specific design, decoding and display device.

The television receiver/display device has been part of the video/audio distribution industry since TV commenced transmission. Receiving its signal through an antenna, it remained as a single use device while analogue technology continued to be used. Other devices such as VCR and DVD players and recorders became available with a primary use of processing hard copy content. Special connectors are added to the TV set for, display quality improvement.

The terrestrial Free To Air Platform was the primary purpose of the receiver/display device.

Change to digital transmission along with the development of screen, and digital receiving technology, all add to the consumer demand for better quality and quantity and created markets for new delivery platforms and new processing/display platforms.

Televisions Today

A multi-platform, multi-delivery network through antenna, LAN ports and multi dwelling networks to devices for either single or multi-platform decoding and display devices.

Today's TV devices use global chipsets with the product able to be used in most countries around the world. There is a limited number of chipsets being used by most manufacturers and include features once developed separately by each manufacturer.

For example the COFDM IC, once a separate device is now becoming part of the main IC.

There is an increased number of delivery platforms, a changed and increased number of content distribution systems used by consumers and as a result an increased variety of receiving device features within those devices and methods to connect to the content distribution system.

TV receiving devices can have RF, Ethernet and HDMI connections with some product only having RF while others include multiples of each connection.

While the entry level TV has RF connection it may also have analogue composite video and HDMI connections, however its primary purpose/use is as a receiver and display device for Free To Air receiving and display.

Free To Air RF has total prominence in such devices. EPG is available when provided by the broadcaster. Design of the EPG display is the responsibility of the manufacturer, but in most if not all cases it only contains FTA terrestrial platform content, is relative to the service being viewed and has access to a full guide of all services in Logical Channel Number (LCN) sequence. LCN is a numbering system used by Australian broadcasters to distinguish each service within an Australian Broadcaster generated EPG.

Inclusion of such devices in a prominence framework is not for prominence but control.

The television device market as a whole is a very competitive and while technology chipsets and panels may be used by several manufacturers the market is driven by price and features.

Overview of the TV Market.

- Total Market. 1.5 to 1.8 million.
- 15 plus alpha Brands in Market.
- 5 manufacturers supply 60% plus of the market
- 500 plus alpha, models (and variations) sold in 2022.
- 90% plus alpha, smart TV. 10% minus alpha non smart TV.
- Some Manufacturers use their own OS while others use different third parties.
- Today's product is technically complex, can be based around a single chip, plus memory that is fragmented to the requirements of different regions.

2) FTA BROADCAST PLATFORMS TODAY

Platforms available to FTA broadcasters. Presence on each platform is decision of the broadcaster.

Summary

- Terrestrial FTA, Metropolitan, Regional.
- Streaming FTA, Using Manufacturer OS or 3rd Party OS.
- Satellite and Cable subscription services. FTA Live channels
- HbbTV. FTA. Metropolitan.

Terrestrial platform.

- FTA services only exist on this platform, they are entirely prominent.
- SD (sometimes duplicated. Sometimes same content on 2 LCN)
- HD (some HD services are simulcast of SD)
- Radio. Some broadcasters.
- Available to all product with RF Tuner.

HbbTV Streaming platform only for FTA accessed only from terrestrial platform.

- Not available in regional areas.
- Not accessed from devices home page
- Must be certified by Freeview as well as Freeview certified Test Lab.
- Freeview decide when to change version of HbbTV.
- Manufacturer can decide to include HbbTV stack within their device.
- Manufacturer can decide to apply for Freeview certification.
- Broadcaster/Freeview can whitelist certified product thereby also blacklisting devices with HbbTV stack but not certified by Freeview.

Individual broadcaster APP.

- Has both BVOD and Catch-up.
- Broadcaster commissions development of their APP.
- Broadcaster pays for development.
- Manufacturer does not have access to APP software.
- Broadcaster makes decision which device manufacturers and which OS they will work with. Not all broadcasters develop APP for all device manufacturers.
- Payment, Competition rules prevent CESA from openly discussing such matters other than to say not all agreements require broadcasters to pay for access or prominence. Also broadcasters can develop Android App without reference to manufacturer.

Notably, the 2022 Television Consumer Survey found that:

Most respondents always or sometimes know which service they want to watch when they go to watch screen content.

*The benefits of watching free-to-air TV focus on the lack of cost and **ease of access**.*

3) COMMENT ON OTHER JURISDICTIONS.

The prominence regimes developed by Government in Germany (German Media State Treaty), the United Kingdom ("Media Bill") and France are each are experiencing issues with delivering outcomes due to inherent flaws with their respective regimes. Below are commentary in relation to the German and UK regimes.

Germany

Regulators have developed a prominence regime that cannot be understood by manufacturers in that market and which it requires be implemented in 6 months. The regime is impossible for TV manufacturers to implement, both from a technical perspective and timeframe. CESA TV Members have serious concerns that the

prominence framework proposals being suggested for Australia look to be going down the same path.

United Kingdom

Comments on what is happening in the UK vary, but there are some points which must be considered:

- The EPG landscape in the UK is very different from Australia.
- Essentially the work implemented by Ofcom so far is to extend the prominence of PSB into EPG.
- EPG in the UK are commercial arrangements providing details of content from all platforms.
- Services from PSB's are given priority LCN numbers.
- An EPG can be made up 999 services.
- The EPG providers for the relevant period to November 2021 were: BT, Digital UK for Freeview, Freesat, Sky, STV, Virgin Media and YouView.

Notably, this is different to EPG in Australia where LCN numbers are allocated to FTA broadcasters and the EPG only contains FTA broadcaster information and is provided by SI to the receiving device.

Manufacturers in the UK have seen virtually no progress with the overarching "Media Bill" the regulator Ofcom has been hampered by lack of direction from Government and have not shared the draft Bill with industry.

UK Manufacturers therefore are still waiting to see what is precisely being requested/required. Further consultation is expected to occur at the end of August 2023.

Ofcom are keeping an awareness of the prominence situation and are gradually introducing regulation, not so much related to prominence, but rather things like suitable parental controls etc.

Ofcom is guided by ensuring the market remains fair and equitable.

Europe

The examples from Europe demonstrate gov't/regulators underestimating the real and significant issues involved and expediting implementation to support a vague political statement of prominence.

4) FRAMEWORK INTRODUCTORY COMMENTS

For the reasons outlined below and using the definitions in Chapter 1 of the Proposal Paper, Australian prominence regulation should focus on:

1. Availability (defined as presence of an application, or, in some cases, type of TV content, on a TV device); and
2. Discoverability within apps only.

It should avoid any regulation around app Positioning or Discoverability of content through device menus that aggregate content.

While CESA recognises and supports the intended role of local FTA services (in Chapter 2), it should not be assumed that FTA services (at least commercial FTAs and their BVODs) always fulfil this role. Even where they do, regulation of TV manufacturers which extends to Positioning (versus Availability) is not justified.

Solutions such as content quotas across all local and international BVODs – as proposed in the recently announced Cultural Policy – are a more appropriate means of balancing competing policy priorities and ensuring that the objectives for FTA services can be met. These quota solutions foster local content without interfering with consumer freedom/choice, existing market competition on a level playing field and etc. It should be noted here that some Free ad-supported TV (FAST) channels do not produce any content but rely on licencing agreements and would need to rely on licensing agreements with local content owners to fulfil any local content quota imposed on them.

Certain assumptions which appear to underly parts of the Proposals Paper are also not borne out by the evidence, and so conclusions based on these assumptions need to be carefully reviewed against the evidence.

For example, it should not be assumed that it is local FTA or their BVODs producing and promoting most local content when there is competing evidence in Screen Australia's Drama Report and when the Department's recent draft Television Consumer Survey indicates consumers accordingly don't watch local FTA BVODs significantly more than international streaming services for local drama or news (vs sport).

It also shouldn't be assumed or stated, without evidence, that local FTA BVOD's are not operating on a level commercial and competitive playing field to international BVODs given the evidence below suggests otherwise. If they are operating on a different regulatory playing field then, again, the better solution is not to add further differential regulation (via Positioning) but to correct the existing differential (via equivalent content quotas on local and international BVOD's).

Comments on Chapter 6 (Framework Scope)

As the Proposals Paper recognises, content these days is consumed via a variety of devices, operating systems and platforms, not just Smart TV's. This includes Apple, Android, set top boxes and plug in providers (like Roku, Foxtel, Fetch and Telstra). There is also other product that may have RF and Internet receiving or distribution capability but such product has a quite different primary function. There is a list of devices above that can be the basis of the included device. Other devices can be forced into the list by a party submitting evidence the device is being used for showing greater than a regulated level of viewing of broadcast or streamed content.

In this frame it is important to note that regulation that selectively imposes any type of prominence obligations on Smart TV manufacturers only, rather than across other devices having a primary purpose of receiving and or distributing RF or Streamed content, carries problems. It will skew the market and level competitive playing field in favour of those that do not provide content via Smart TV.

Positioning

Positioning type of prominence (as defined in the Proposals paper) necessarily involves de-prioritising the position of certain international (versus local) apps. No other jurisdiction has regulated Positioning (as opposed to Availability or Discoverability) of local apps by TV manufacturers. In the main, global regulation has targeted Availability and Discoverability of local apps and content and has restricted this to requirements on SVOD (apps) such as Netflix and Amazon Prime, rather than on TV manufacturers/ devices themselves.

In Germany and the proposed UK framework, regulation extends to TV manufacturers but again covers positioning of content only (not Positioning of apps (as per the Proposals Paper definition)). The EU prominence framework further limits the prominence definition to “findability and accessibility of general interest content...” i.e. it is similar to the Availability and Discoverability definitions in the Proposals paper but with an additional “general interest” requirement.

Australian prominence regulation should similarly focus on 1. Availability (including on devices) and 2. Discoverability within apps, but avoid any regulation around app Positioning.

Control over options and preferences for viewing streaming content is ultimately one between content providers/broadcasters and the consumer, with consumers rightly having the power to remove and re-order apps on a Smart TV based on their tastes and preferences.

Considerations to include an APP to a manufacturers platform are conducted as normal business negotiations, with positioning of the icon taking many things into consideration, including favourable consideration because it is a local broadcaster and also including retailer input based on consumer requests.

When parties are satisfied that technical requirements can be met, It is the broadcaster who decides on the APP developer to be used and it is the broadcaster who pays the developer of the APP.

Regulation seeking to impose obligations around Positioning on any device is also problematic for a variety of further reasons. These include the difficulty of regulation keeping pace with a constantly evolving technological landscape (which includes, for instance, significant consumer demand for prominence of gaming and others apps - not just TV - and the likely entry of other free to air (FTA) players from overseas e.g. BVOD free catch up “fast channels” from the US).

A good starting point for considering proposed policy around prominence is what are the intended objectives. CESA understands that the objectives are to:

1. Boost viewership of local commercial TV stations in order to ensure their continued viability and in turn achieve the following two objectives
2. Support local content and promote Australian stories and voices;
3. Ensure the ongoing availability and ease of choice to all Australians of a diverse range of free local TV outside of ABC and SBS public broadcasting.

Unfortunately, these objectives cannot be met via Positioning, as opposed to Availability regulation. Positioning regulation additionally carries unintended consequences, mostly for consumers.

By way of further detail:

- There is a body of evidence globally that suggests Positioning is not sufficient for increased viewership. Content must be engaging and in demand, whether locally or globally created, if it is to generate wide viewership. This indicates that local broadcasters, like all content providers, should adapt their user experience to appeal to as wide a viewership as possible.
- The Department's DTVC Survey on Australian consumers further supports this evidence and the picture of consumers as quite deliberately seeking out certain types of service and content (including quality local content on international streaming services) based on preference and engagement, versus any influence through Positioning. For example, it found:
 - most respondents have a sense of the program or the type of program they want to watch before they turn on their device and that approximately one-third said that they either have a particular program or movie in mind (30%); and
 - only around one-fifth of respondents do not typically know what they want to watch and so browse content.
- As touched on above, the assumption which seems to underly the Positioning option in the Proposal Paper is that it is local FTAs or their BVOD services in the main making and promoting local content and fulfilling the public policy functions of FTAs outlined in the Proposals Paper. This is not the case and consumers seem to realise it-engaging with international streamers for local content almost much as they do with local on demand services:
 - Screen Australia's 2021-2022 Drama Report shows the number of Australian dramas produced by subscription and streaming services has tripled from 9 to 29 titles with a total budget of \$446m, eclipsing the \$208m spent on free-to-air programs: Spending and the number of hours of local content from local FTAs was to reduce again by half when Neighbours was removed this year- from 278 to 139 hours. Those extra Neighbours hours are now to be produced by global app provider Amazon - further increasing the gap between what global app providers are local FTA's are producing.
 - The percentages of respondents in the DTVC Survey who said their favourite Australian TV shows/movies, or a broad range of local shows/movies, was a reason for them watching was relatively similar across local FTA, local on demand and online subscription services (around 69%, 74.4% and 63% respectively). This indicates that Australian consumers know international

streaming services are offering diverse, quality local content and this is a reason for them engaging with those services, almost as much as it is for engaging with a local station/app.

- 82% of the Australians surveyed saw national and international news as a key reason to watch FTA but presumably did not perceive the on demand services of these FTAs as providing relevant news in the same way (with only 62% saying this was a reason for them to engage).
- Australians similarly consume sport on FTA commercial stations and not on FTA BVOD services (which they look to not much more than online subscription services). Half of respondents (50%) had consumed sports content via commercial free-to-air TV compared to 16% for commercial free-to air on-demand TV, 10% for publicly owned on-demand TV and 7% for online subscription.
- The unintended consequences of introducing Positioning regulation on Smart TVs in Australia include:
 - It would generate significant costs for reconfiguring TVs here (noting we are a relatively small market, around 1% of all global sales). This would also likely result in a much smaller range of TVs available to Australian consumers. As early technology adopters of technology this would be particularly painful to Australian consumers who would not have access to the latest technological advancements and Smart TV models.
 - Smart TV manufacturers may potentially abandon home screens/ current user interfaces altogether if they become irrelevant and annoying to consumers given regulation.
 - Selectively imposing Positioning regulation on TV's and excluding monitors (as proposed) may also increase supply of and/or demand for monitors versus Smart TVs.

Consumers ultimately want, and should continue to have, choice over the apps and content they prioritise and watch. Device manufacturers (including of smart TVs) look to data and algorithms on viewing preferences to ensure that apps most popular with consumers continue to remain prominent and easy to select on a device menu/home page.

Ch 7, 9 and 10 stand alone in having chosen (with a few minor exceptions of advertising) to enter into commercial arrangements with TV manufacturers for either app placement or advertising placement on the device menu/home page. In contrast, public broadcasters SBS and ABC, related entities of Ch 9 and 10 (Stan and Paramount) and many other app providers have all seen the value of such arrangements.

It is also perverse that local commercial stations charge TV manufacturers to advertise with them and yet see no reason to reciprocate with payment for app placement or advertising on device menu/home page.

Given this and the various considerations and unintended consequences above, it is difficult to see any policy reason for facilitating free Positioning for local commercial stations. To do so would in fact "unlevel" the commercial playing field, especially in

circumstances where plans to introduce local content requirements on international streaming services:

- have been announced (as part of the new National Cultural Policy) and
- are more effective/appropriate to addressing the local content policy objective.

Finally, if the Government was to legislate on Positioning for certain local Apps, then:

- It should, as per the prominence proposal in the UK (not yet legislated but acknowledged in the Proposals paper) i.e. obligations in respect of public broadcasters only (not commercial FTA providers).
- Smart TV manufacturers would need a minimum 2 year timeframe to comply since work on Smart TV designs for 2024 has already commenced.
- The Apps must be free.
- App providers given legislated Positioning should be required to produce and promote a proportion of local content on their streaming services (not just their terrestrial services)-in line with plans to impose this on international streaming services and noting the policy intent is not to drive the ability of local Apps to continue promoting international content.
- The device supplier should be entitled to impose terms -including payment- on the App supplier (in line with Positioning presumably being sought in relation to other apps, due to a perceived commercial gain).
- It should be a requirement for App developers/providers to create and maintain their Apps to work on “Smart TV’s” supplied to market at their own cost.
- The Apps should be required to work on all Manufacturers Smart TV’s for the Life of the Product at the app provider’s cost noting:
 - Contracts can allow exceptions to this should App owners not wish to “update/change” their App to ensure continuity or want to “sunset” their App on legacy devices.
 - If an App does not work, manufacturers cannot be forced or held accountable for a defective App (noting under Australian consumer law, manufacturers cannot sell a defective product). Manufacturers need to be able to remove (sunset) an app that hasn’t been updated to avoid customer issues/complaints due to a bad user experience.
- A definition of Positioning would need to work into it that:
 - There are contractual arrangements of varying lengths in place with local and global apps on TVs across different manufacturers. Currently this means there are insufficient spaces on the home page device menu of most TV models (without scrolling) to give ABC, SBS, all commercial FTA and community station Apps a position.
 - Defining “Positioning” has further serious limitations associated with the speed at which technology/device menu features change and the number of variables at play. For instance, there are currently a number of methods by which Apps can appear on a device menu including pop ups and tiles. Methods vary by manufacturer, TV year and models for each manufacturer

but, even within the one model, new methods of display are evolving within a matter of months from a model launch and more than once a year.

Availability and Discoverability

Availability of apps on a device

- This is already provided by Smart TV manufacturers. While it may be appropriate for some form of regulation to ensure this, the DTVC Survey indicates there is not any widespread issue of Availability or a problem requiring regulation of Smart TVs:
 - When considering the ease of navigating to on-demand FTA TV on a range of devices, only 5% of respondents found it was difficult (and a fraction of 1% very difficult) on a television.
 - The main reasons cited for difficulty in navigating to FTA TV (live or on-demand and across all device types) were problems with signing in and passwords or creating accounts on the FTA BVOD Apps themselves. This shows definitively that there is actually not an access or availability issue caused by TVs themselves which requires regulatory intervention and that local FTA BVODs need to take steps to rectify technical issues with their own apps.

Discoverability of content within apps

- This is controlled by the app providers (here local broadcasters) so obligations cannot be placed on other parties.

Discoverability of content across all apps (e.g. through a home screen search function)

- This is not technically possible or commercially viable given the need for all app providers to also provide backend technical changes to allow this and the fact they are unlikely to want to do this across any, let alone all, Smart TV models.
- Based on similar functionality which could be made available to consumers, Smart TV providers have traditionally seen that it does not become commercially viable for local broadcasters to provide these backend technical changes until there are a certain number of connected devices for that specific year in market. Regulation should, for that reason, not extend to requiring particular content be searchable across all apps.
- Further technical issues with providing Discoverability of content across all apps include:
 - not all smart TVs have the capability or memory to provide discoverability of particular TV content (which relies on download of metadata)
 - discoverability is affected by availability of apps for a particular operating system (and the version of the system) by the author of the apps.

For the reasons above, there should not be a legislated prominence framework beyond Availability (which is already provided by TV manufacturers) and Discoverability within apps only.

Positioning will not achieve the intended objectives (notably boosting viewership/production of local content). Discoverability via a device menu aggregating content (or the ability to search for content across all apps) is not generally feasible for App providers (who need to do back end work for it to work technically) and so not realistic at this point based on existing technology.

Ultimately, it should be recognised that Positioning (and indeed prominence of any kind) is not sufficient to deliver viewership. Metrics on viewership (collected via screens), together with several independent studies, show that engaging content and ease of use are the single most important drivers of viewership.

Consumers have, and should retain, the choice of which apps appear on their device menu/homescreen with the ability to delete and reorder according to preference. Apps that are most popular must retain positions of initial prominence on device menus (irrespective of commercial arrangements) as this is ultimately what a majority of consumers demand (for convenience).

Except for ABC and SBS (who offer a significant range of public interest local content and occupy special position as key public broadcasters) it is difficult to see from any policy perspective why local broadcasters should be given a further free offering especially where it is not attached to a requirement that it be used to promote local content.

It is CESA position that a prominence framework should not be introduced outside of Availability and Discoverability within apps.

5) COMMENTS ON THE PROPOSED FRAMEWORK

Framework Scope

Chapter 5

5.1. Includes, by the Glossary,

“devices capable of receiving and displaying linear TV broadcasts transmitted via radiofrequency spectrum (i.e. television sets, whether or not they are internet-capable.

CESA does not support the inclusion of such product.

It represents approx. 10% of the TV market and is at the entry point of TV product. Furthermore CESA does not support including product whose primary purpose is other than viewing the services of FTA broadcasters

Comment;

5.1: (a) is already provided by TV manufacturers. While this makes regulation unnecessary (at least in respect of TV manufacturers).

CESA supports regulation to ensure that:

(a) regulated TV devices (excluding the above, with an RF tuner provide access to the linear TV broadcasts of FTA broadcasters on the primary user interface of the device;
(b) (i.e. regulated TV devices with an RF tuner to default to the linear TV broadcasts of FTA broadcasters when no other input is selected on the device), consumers are taken straight to a device menu on most TVs when switching it on and choose an input (free to air, various on demand apps etc). Users can also be returned to whatever content they last watched as the default on many models. This consumer input/choice should remain to ensure that consumer choice and preferences can be easily executed, especially given the DTVC findings that most people have an idea of the service and content they want to watch prior to turning on devices.

In addition 5.1(b) would require changes to regulated TV devices imported into Australia, with a cost that would be passed on to consumers and a potential removal of some models being available in Australia as a result.

(c) CESA cannot support regulating remote controls.

Remote controls are used globally, generally made outside the TV product manufacturer and use a series of codes specifically for each manufacturer.

Add to the above changes in the way content is being delivered by content providers as well as technological changes to remote design. Regulating such a device will add significantly to the cost and will not provide any prominence benefit.

5.2: It is unclear whether 5.2 (prominence of FTA linear TV broadcasts and FTA BVOD applications) envisages Positioning, Availability and/or Discoverability type of prominence. While 5.1 discusses Availability, 5.2 shifts to general “prominence” language.

For the various reasons above, Positioning (versus Availability) of these apps will not achieve the Government’s policy goals and the assumption should not be made that these services (or at least all of them) are producing/featuring the majority of Australian programming (including drama, news, emergency information etc).

Proposal 5.2 would, if it relates to Positioning, also require contractual changes with entities that currently have commercial arrangements with TV manufacturers for Positioning, which has global ramifications, significant costs and legal implications.

Priority Positioning for the local FTA broadcasts and BVOD services (compared to international streaming services) is also not an outcome that reflects contemporary use and consumption patterns or consumer preferences for Apps. Consumers want apps with the most engaging, popular and frequently watched content (whether international or local) to have priority Positioning.

5.3: As for 5.2 it is not clear whether 5.3 (prominence for content services providing Australian programming) relates to Positioning and/or other types of prominence in the Proposal Paper.

While the policy intention (to foster local content/programming) is clear and this proposal would see international streaming services who invest in local content also given prominence if local content regulations are imposed on them, it is still not appropriate to introduce Positioning regulation to any service. This should remain a function of consumer preference/popularity and commercial arrangements which exist on a level commercial playing field. Availability and Discoverability of content within apps (only) for all regulated content services providing Australian programming would, however, be appropriate.

If a Positioning form of prominence was introduced (something CESA strongly opposes) then it should include a clear, certain definition of Positioning including, amongst other things, the conditions in the commentary on 8.3 below in order to provide certainty about what that concept means.

Chapter 6

CESA believes that writing a definition for TV devices is difficult now and will become even more so in the future as product is developed that further clouds the primary use of viewing content.

A broad statement including things such as washing machines is not acceptable. Using the example of the washing machine, while a manufacturer may develop such a product to try to gain some market recognition, the concept of receiving content on a washing machine and displaying it separately, is not a concept that at this time would even appeal to a modicum of the market.

There is a list of devices mentioned in earlier commentary that could form the basis of the included device.

Other devices can be forced into the list by a party submitting evidence the device is being used for showing greater than a regulated level of viewing of broadcast or streamed content.

Chapter 7

(7.1/7.2)

There is a variety of relationships within the manufacturing of TV devices. While some product may come from reference design from chipset, other come from manufacturers with their own OS, to other manufacturers who use a third-party OS.

In each case there are different levels of responsibility for each party.

Managing those responsibilities can vary for each product.

Therefore, imposing responsibilities onto a source will vary by Manufacturer.

If prominence regulation is imposed, Proposal 7.1 (device manufacturers only) is supported by some manufacturers while 7.2 (multi-party obligations in terms of responsibility for compliance). Is accepted by others.

While 7.2 is likely to include suppliers of software and operating systems, it could also extend to content providers. The multiplicity of parties within 7.2 may reflect the reality of legal relationships and control over the user experience on TV devices, but it would be complex, realistically unworkable to implement and inject uncertainty.

It must be built into the above that TV manufacturers cannot provide Availability, much less other forms of prominence, without app providers continuing to make this possible

technically e.g. decisions to remove apps on legacy devices is a broadcaster decision and so obligations cannot be imposed on a TV manufacturer. Similarly when it comes to Discoverability of content within apps this is solely within an app provider's control.

Taking from Proposal 7.1: obligations on device manufacturers the following is a mandatory part of any framework.

“However, the capacity for device manufacturers to provide prominence for local TV services will depend on content providers developing and making available applications that meet the ‘reasonable technical requirements’ of the relevant device (and its operating system). This proposal would afford manufacturers an exception from liability for prominence in the circumstances where the relevant local TV service had failed to supply an application that meets the reasonable technical requirements of the relevant device. This would ultimately need to be assessed on a case-by-case basis. However, the regulator would have a power to provide guidance on what constitutes reasonable technical requirements, and the capacity to assess and determine whether those requirements have been met in specific circumstances.”

Chapter 8

A reporting framework (Proposal 8.1) would be the most appropriate given that Availability is the only regulation CESA considers appropriate to TV/device manufacturers, but is not necessary to the extent that Availability is already provided.

A fair bargaining framework (Proposal 8.2) is not required in relation to Availability.

While a must carry (access) framework limited to Availability of apps might be something CESA could support, the must carry framework as outlined in Proposal 8.3 is more akin to Positioning style prominence regulation than carriage/availability/easy accessibility of local TV services, and so not supported.

Likewise, Proposal 8.4 is not supported with a further comment that it is not appropriate or reasonable to require a range of Positioning and Discoverability conditions without payment/a fee and that this proposal fundamentally alters free market outcomes/competition and removes a level competitive playing field.

If Proposal 8.3 was to be imposed (something which CESA opposes for the reasons provided in this submission) then the potential requirement at (1) should be removed (i.e. for local TV app to be located/available from primary device interface and visible from start up unless a user alters the placement). This would require specialist Australian TV configuration (at a cost to consumers) and is not necessary (on top of the other potential conditions outlined) to achieve the policy objectives. The requirement for disclosure (where placement of apps/ content is the product of commercial arrangements) is also problematic given existing in confidence commercial arrangements.

The other potential conditions and rights in 8.3 are at least reasonable if Positioning was to be imposed (something CESA strongly opposes) i.e:

- a local tile/access point on primary user interface visible from start up to provide access to local apps (2) This would only be possible or reasonable if it was provided via one new APP within which all local BVOD broadcasters appeared. App owner/providers must agree to support developed APP for a minimum period of 5 years.
- local TV apps available from any relevant app store or library available on the device (3)
- For devices with RF tuner linear TV accessible from primary user interface and remote/other control mechanism, plus any EPG includes all local TV linear broadcast offerings and presents them using logical channel number sequence (4),
- ability for TV devices/manufacturers to charge fees to local TV apps for anything beyond Availability i.e. for Discoverability and Positioning.

It should be noted that Discoverability of local content within apps (the only other regulation CESA considers appropriate) is a matter for regulation of app providers and a potentially different framework model (for local content quota regulation).

Chapter 9

In terms of framework implementation and whether it is best to occur via primary and/or secondary legislation and the role for ACCC and ACMA:

Proposal 9.2 (amendment to Broadcasting Services Act and ACMA oversight) is more appropriate than Proposal 9.1 (mandatory industry code via regulations under Competition and Consumer Act Part IVB with ACCC oversight) to a reporting based framework and given that the ACCC is not the sector regulator. However, since Availability is already provided/ a reporting framework is not necessary, Proposal 9.2 is not required.

Proposals 9.3 is not required.

A framework is not necessary but, if legislated, mediation and arbitration should also be available in some form.

CESA is keen to work constructively with the government and all parties to deliver sensible, fair and equitable outcomes which work for consumers.

6) SUMMARY OF MANUFACTURERS' POSITION RELATING TO PROPOSED FRAMEWORK.

- a) Manufacturers understand, accept and support the importance of the Free To Air platform to the Australian market.
- b) Manufacturers do not see a technical solution to this issue because the framework is so broad and without a technical solution, local and corporate offices cannot review the requirements in accordance with technical planning and commercial trading arrangements particularly if changes are needed to be made to chipsets.
- c) Prominence must be defined in detail to permit proper consideration of product requirements. Even though described in "Prominence framework for connected

TV devices Proposals Paper December 2022” various stakeholders obviously have differing views of the meaning.

Manufacturers endeavour to follow country requirements but such requirements must be in line with global standards and must be in accordance with Global Trade Agreements. Basic Hardware and Software is designed for Global Markets using globally used chipsets. Design for specific markets is resource intensive and prohibitively costly and cannot be sustained in today’s market.

- d) Retrospectivity cannot be supported under any circumstance. Basic technical/design restrictions and resource limitations means that most (if not all) manufacturers cannot support retrospectivity.
- e) Manufacturers require a minimum of 2 years from date of final issue of technical specification, to implement new technology or regulated requirements into new models. Suggesting otherwise demonstrates a naïve understanding of product development and manufacturing.
- f) Manufacturers do not have App development resources. It is the responsibility and cost of the App owner to pay for the App development.
- g) Manufacturers do not support feature upgrading of their product.
- h) App owner/provider must agree to support each developed APP for minimum of 5 years.
- i) HbbTV cannot be mandatory. It is not mandatory for broadcast. Smaller manufacturers supplying price entry point product may not have access to a HbbTV stack, with the consequence being such product will likely disappear from the market and have greatest impact on the less advantaged. At best it will have a significant impact on price.
- j) Devices must return to last viewed service. Existing Global arrangements.
- k) Based on today’s technology and design manufacturers alone cannot be made responsible. There are long standing global agreements in place that make some of the framework options impossible for manufacturers to support.

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Consumer Electronics Suppliers Association
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