

# SUBMISSION TO THE INQUIRY INTO THE COMPETITIVE NEUTRALITY OF THE NATIONAL BROADCASTERS

## About Per Capita

Per Capita is an independent progressive think tank, dedicated to fighting inequality in Australia. We work to build a new vision for Australia based on fairness, shared prosperity, community and social justice.

Our research is rigorous, evidence-based and long-term in its outlook. We consider the national challenges of the next decade rather than the next election cycle. We ask original questions and offer fresh solutions, drawing on new thinking in social science, economics and public policy.

## Executive Summary

Public broadcasting exists to serve the interests of the public as citizens, not as consumers.

It is essential to the effective functioning of democracy that public broadcasting remain independent and comprehensive in its service to the public.

The principles of competitive neutrality, which extend competition law into the public sphere, are not applicable to the national broadcasters, as neither constitutes a significant business operation as defined in the Commonwealth's Competitive Neutrality Policy Statement.

Even if the national broadcasters met the threshold for qualifying as significant businesses, the government can and should use a public interest test to exempt the ABC and SBS from the application of the principles to their operations.

Calls for the national broadcasters to limit their online and/or digital operations rest on false assumptions about the nature of the competitive market in online services and cause of the reduction in advertising revenue to the commercial broadcasters.

The national broadcasters are explicitly charged with operating in the digital space, and would be in breach of their chartered obligations to serve the Australian public if they were to cease such operations. Digital and online operations are critical to the ongoing educative function of public broadcasting in the 21<sup>st</sup> century.

There is no empirical evidence that the operations of the national broadcasters in the service of their public interest objectives are causing undue market disruption or directly disadvantaging the private media sector.

Per Capita does not believe there is evidence that the limited commercial activities of the national broadcasters involve any undue advantage to the ABC or SBS, to the detriment of competitive outcomes.

### *Why do we need public broadcasting?*

The existence of an independent, taxpayer-funded public broadcaster is based on the need for media that has a legislated responsibility to:

- Put the interests of 'the public' above those of advertisers, governments, or any one particular interest group;
- Accurately reflect the diversity of its audience, providing space for Australians in their myriad differences to find what they have in common by talking to and learning about each other.

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) put it this way:

*Neither commercial nor State-controlled, public broadcasting's only raison d'etre is public service. It is the public's broadcasting organization; it speaks to everyone as a citizen. Public broadcasters encourage access to and participation in public life. They develop knowledge, broaden horizons and enable people to better understand themselves by better understanding the world and others.<sup>1</sup>*

Early BBC historian Paddy Scannell has argued that the BBC created the first approximation of a national culture in the UK, and this idea has since informed the study of public broadcasting as a nation-building institution. Georgina Born's anthropological work on the BBC supports Scannell's interpretation, showing that the public sphere, the community space or 'virtual village square', created by public broadcasting is an essential component of modern Western democracy.

### *What is competitive neutrality?*

As stated in the Commonwealth's Competitive Neutrality Policy Statement:

*Competitive neutrality requires that government business activities should not enjoy net competitive advantage over their private sector competitors simply by virtue of public sector ownership.<sup>2</sup>*

Essentially, this means that wherever government business enterprise (GBE) competes in the market with one or more private providers, it should do so on an equal footing, without advantage afforded by its public ownership. Competitive neutrality "...is a companion policy to the extension of the operation of competition law to the public sector"<sup>3</sup>.

### *Competitive neutrality and the national broadcasters*

Given that the competitive neutrality principles apply to government business activity, it is arguable that the national broadcasters do not fall within their remit.

That is, neither the ABC nor SBS operates a business, as such. Neither of the national broadcasters is a Government Business Enterprise as, for example, is Australia Post. Neither broadcaster operates for profit, or is required to return an economic dividend to the government. Nor is the government a shareholder on behalf of the commonwealth in either the ABC or SBS, as it is in NBN Co, for example.

It is, therefore, difficult to justify the application of the competitive neutrality principles to the national broadcasters. As noted by Alexandra Merrett and Rachel Trindade, "Unfortunately if you're a media mogul,

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<sup>1</sup> UNESCO (2001) Public Broadcasting: Why? How? UNESCO, 2001, <http://unesco.org/images/0012/001240/124058eo.pdf>

<sup>2</sup> <http://archive.treasury.gov.au/contentitem.asp?ContentID=275>

<sup>3</sup> <http://thestateofcompetition.com.au/wp-content/uploads/2013/09/TSoC-Issue-13-competitive-neutrality.pdf>

the ABC's online news service falls outside the scope of competitive neutrality – it doesn't meet a threshold test of being a significant business (not really being a business at all)".

Moreover, Merrett and Trindade make clear, competitive neutrality principles can and should be suspended where there is a clear case of public interest in allowing a government business to compete with advantage in the market:

*Where competitive neutrality would compromise public policy objectives, the government can use a "public interest" test as an out. This can be justified after the fact (whereupon the onus rests with the government to prove its case).<sup>4</sup>*

Given that the government has launched this Inquiry, it would seem evident that it has no intention to claim an exception to competitive neutrality principles on public interest grounds for the national broadcasters.

Even if, though, we accept that the national broadcasters should be subject to the competitive neutrality principles, there exists already an established avenue for any material breaches of these principles to be investigated, through the Productivity Commission, as has been noted by Michael Pascoe<sup>5</sup>.

Why, then, is this inquiry underway and what is it seeking to address?

#### *Online and digital service provision by the national broadcasters*

The Inquiry's issues paper makes clear that it is primarily the advent of online ("digital") activities within the services provided by the ABC and SBS that has led to the latest calls from private sector media to review and reduce the operations of the national broadcasters, leading to this Inquiry.

The issues paper argues that the advent of digital broadcasting and the internet have created an unprecedented disruption to media markets, leading to increased competition to private media providers at a time when their traditional source of revenue – advertising – has been gobbled up by online services such as Facebook, Google and Amazon.

The ABC takes no advertising, and SBS is extremely limited by legislated restrictions on the amount of advertising it can carry, so there is no argument that the national broadcasters are taking revenue from the commercial broadcasters directly.

Rather, the argument of the commercial broadcasting sector is that the ABC and SBS's online "catch-up" or streaming services are competing unfairly for viewers who would otherwise be engaging with the commercial sector's offerings in this space.

There is little evidence to support this claim. The ABC's iView is by far the country's most innovative and successful online streaming service, and SBS OnDemand isn't far behind. After a decade or more resisting the move to online / over-the-top / content streaming services, the Australian commercial broadcasting sector has belatedly begun to offer similar services, but their reliance on advertising revenue necessarily limits their functionality compared to an entirely subscription-model service such as Netflix or one not reliant on inserting advertising into content such as iView.

As commercial broadcasters can't directly compete with subscription services such as Netflix, it appears they are focused on removing the publicly-funded iView service instead. However, even if this were to occur, it would not address the competition issues facing commercial broadcasters, as their primary competition is

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<sup>4</sup> <http://thestateofcompetition.com.au/wp-content/uploads/2013/09/TSoC-Issue-13-competitive-neutrality.pdf>

<sup>5</sup> <https://thenewdaily.com.au/money/finance-news/2018/05/14/abc-funding-cuts/>

coming from commercial subscription services. Advertising revenue models require broadcasters to interrupt programming with commercial material, which interferes with the viewer experience as now expected by audiences due to the dominance of subscription services in the OTT market. The removal of a high quality, public interest service such as iView will have little impact on this now-entrenched market condition.

Regardless, though, of the operating model underpinning streaming services, the factor driving audiences to online provision of programming is the quality of content. That is, it is not the public ownership of the ABC or SBS that affords it any advantage in the marketplace, but rather the superiority of its product offering.

It is critical to note that the programming offered by the national broadcasters is increasingly distinct from that offered by commercial broadcasters in Australia. With the shift of audiences away from linear viewing to OTT services for scripted drama, comedy, documentary and current affairs programming – IE: any content that does not rely on live / real time viewing - commercial broadcasters are increasingly reliant on live sport and reality programming to drive their audiences. The national broadcasters, by contrast, show little of this kind of content, and offer programming more comparable to that provided by subscription services such as Netflix.

A final note on competition and the national broadcasters: current complaints from the commercial sector about market disruption caused by the ABC and SBS are in the fine tradition set by Australia's commercial media when the ABC was first formed in 1932. Newspaper proprietors then were outraged that the government would establish a publicly-funded service to provide broadcast radio news, in direct competition to their daily mastheads.

For more than a decade, the ABC was prevented from conducting its own newsgathering, with restrictions imposed to keep them reliant on the newspapers. This campaign against the ABC was led by Keith Murdoch, and only came to an end when the immediate provision of news from the front lines of World War II demonstrated to the Australian public the superior service available through the national broadcaster's radio service, as compared to the print media services reliant on the telegraph.

Nevertheless, ABC Radio did not kill commercial broadcasting in the mid-20<sup>th</sup> century, and it will not be the cause of the demise of commercial media today, nor is publicly funded broadcasting the cause of the revolution in media consumption habits which are disrupting commercial business models today.

### *Public interest should take precedence over commercial interests*

While this Inquiry is explicitly charged with examining the impact of publicly funded national broadcasters on competition in the market for media content, there are broader considerations of the public interest involved.

It is critical that the ABC and SBS can provide digital and online services to continue to meet the needs of its audience as viewing habits migrate online. It is for this reason that the charters were amended in 2013 to explicitly require the provision of digital services.

In *All our futures: The changing role and purpose of the BBC*, published in 1993, the late media academic Stuart Hall acknowledged that the responsibilities of public broadcasting have altered in the face of modern pressures and the changing forces of media production and consumption:

*'[Public broadcasting's] broadly defined 'educative' function is to produce a new, more plural, diverse, culturally differentiated conception of 'the nation' by representing its diversities: to find*

*modes of address which do not rest on the old sacred sources of cultural authority or reproduce the old cultural hierarchies.*<sup>6</sup>

In order for public broadcasters to meet the twin challenges presented by new media technologies and increased cultural and social diversity, they must operate innovatively and independently within the parameters of Hall's 'educative' function.

A national public broadcaster's obligation, as traditionally understood, was to the expression of a cohesive national identity, but this obligation has been re-imagined for a modern, multicultural and evolving Australia.

Australian public broadcasting provides the space in which a diversity of voices can challenge, negotiate and reinvent the parameters of national identity. Rather than presenting an authoritative idea or set of beliefs about the nation in the hope of reaching the largest possible audience for the greatest possible time, public broadcasters develop programming and policies which enable them to reach out to Australian citizens as members of multiple, overlapping communities.

Moreover, as market forces gradually encroach upon our public and personal lives, the few remaining public spaces become increasingly precious. In the interests of pluralism and democracy the ABC and SBS serve Australians as citizens rather than as consumers. It must do this by providing services on the platforms favoured by the populace.

This was recognised by the Parliamentary Assembly of the Council of Europe in a report by its Committee on Culture, Science and Education in 2009, which found that:

*.... public service broadcasters should, in accordance with changing user demands, utilise new technologies to increase the accessibility of their services and offer new services including interactive and on-demand media services on all available platforms so as to reach all audiences, and in particular young people*<sup>7</sup>.

*Against the argument that the national broadcasters should operate only to address "market failures"*

Those who argue against the need for the ABC and SBS tend to rely on one of four arguments:

- The rise of new media means that the public interest will be served without the need for public broadcasting;
- It is unfair to tax those who don't make use of public broadcasting in order to provide it to those who do;
- The profit motive makes commercial broadcasters more responsive than public broadcasters to what 'ordinary people' want; and
- The existence of a public broadcaster distorts the "free media market" and presents unfair competition to commercial media at a time when their source of revenue (advertising) has been gobbled up by online services.

These arguments are actually variations on the one idea: the notion that markets are better than governments at serving the public interest, and that most public services should therefore be privatised or corporatised, with public provision of services restricted entirely to those areas of operation that are not commercially viable for the private sector.

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<sup>6</sup> Hall, Stuart (1993). Which public, whose service? In *All our futures: The changing role and purpose of the BBC*, edited by Wilf Stevenson, London: British Film Institute. P. 35

<sup>7</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17763&lang=en>

Contrary to such arguments, public broadcasting does not merely exist to address “market failure” – that is, it is not there only to fill the gaps not served by the private sector; its remit is far broader than that.

For example, under its Charter, the ABC has a responsibility to provide ‘comprehensive services’ and to provide a balance between broadcasting programs of wide appeal and specialized broadcasting programs.

The legitimacy of any government-funded public service is based on its capacity to provide ‘public goods’ or meet public needs which will not be met by either unfettered markets or disconnected individuals acting alone.

Commercial media outlets have many strengths, but they cannot be relied on to prioritise the public interest over the interests of advertisers, media owners and managers; to provide critical coverage of companies with which they have business relationships; or to reflect the diversity of their audiences in their programming.

Online & ‘independent’ media are growing in reach, quality and importance, but they often struggle to produce in-depth, accessible, accurate content based on original research and primary sources; and to reach audiences beyond their own geographical community or community of interest.

As with all public services, public broadcasters face the challenge of reconciling equally legitimate but competing goals, but they arguably do this far better than their commercial counterparts.

Public broadcasters cater to citizens both as individuals and as members of multiple, overlapping communities — including our national community. They must reflect and cater to the diversity of their audiences while also providing a platform for shared conversations.

They must ensure that public money is spent efficiently and accountably, without reducing quality or stifling innovation in cultural production.

Critically, the national broadcasters are accountable to the Parliament through Senate Estimates and other budget processes and must demonstrate the efficiency and effectiveness of their operations continually to the Parliament, acting in its capacity as the representatives of the Australian people who own and fund the ABC. The national broadcasters are, therefore, arguably more accountable to their audiences and owners (the Australian people) than any other media service in the country.

Above all, public broadcasters must fearlessly and without favour question governments, and others in positions of power, from a public interest perspective - one that places a premium on the rights of citizens, the pursuit of truth and the responsibility of those in power to those they serve.

This is a critical function of the fourth estate in our democratic system, and its operation must not be compromised in the short-term interest of the commercial media market.

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