

Submission to Inquiry into competitive neutrality of national broadcasters¹

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1. INTRODUCTION

I am writing this submission as a member of the public who uses ABC radio, television and online content as my primary (but by no means only) source of news and current events, and a frequent source of good drama, documentaries and music.

I don't claim any expertise in the fields of media policy or economics, and although a member of ABC Friends, I don't have any direct contact with ABC staff members. As a result, I'm not able to address the Inquiry's issues from a deep understanding of competitive neutrality theory, or with an insider's knowledge of the ABC's operations. However, my general interest, and this Inquiry in particular, have prompted me undertake some private research on these topics. This reading has included material on competition theory and criticisms of the current model of public broadcasting (such as the recent publication by Chris Berg and Sinclair Davidson².)

I therefore write both as a regular (although often critical) consumer of ABC material, and as a citizen who is interested in the role that the ABC and SBS, play in Australia's economy, culture, democracy, identity and role in the world.

2. COMPETITION POLICY

From my reading it is clear that competitive neutrality considerations sit within and are one aspect of broader framework of competition policy. The definitive articulation of recent Australian competition policy is generally accepted to be the 2015 Harper³ report

¹ While the Inquiry's terms of reference refer to "national broadcasters", I think that this is inappropriate and surprisingly anachronistic in an age of media convergence and global access. The key feature of the ABC and SBS is that they are publicly owned entities, so I generally refer to them as "public broadcasters" in this submission.

² Chris Berg & Sinclair Davidson, 2018, *Against Public Broadcasting: Why we should privatise the ABC and how to do it*, Connor Court Publishing, West End.

³ Harper, Ian. 2015, *Competition Policy Review Final Report*, accessed at <http://competitionpolicyreview.gov.au/>

(“Competition Policy Review”), and the current Inquiry’s discussion paper makes reference to this document.

In the introduction to their report (p.7) the Harper review team make clear that ultimately competition policy is about meeting the “needs and preferences” of Australians. The Harper report sets out some broad objectives of what competition policy should do, including:

- **foster diversity, choice and responsiveness** in government services;
- **encourage innovation, entrepreneurship** and the entry of new players;
- **promote efficient investment** in and use of infrastructure and natural resources;
- establish competition laws and regulations that are clear, predictable and reliable; and
- **secure necessary standards of access and equity**.

These appear to me to be sensible objectives, and I have bolded some that I think are particularly relevant here. I note that the Inquiry’s Issues Paper outlines principles that are generally consistent with those of Harper:

- **public interest is the primary focus;**
- **competition serves the public interest** by promoting efficiency and choice, **but it does not encompass the whole public interest;**
- **competitive neutrality is a necessary part of competition policy** because of the substantial participation by government entities in markets;
- **successive governments have decided that funding of the national broadcasters is in the public interest;**
- **transparency by government entities is needed for accountability** and confidence that obligations and policies are being properly implemented; and
- as far as possible, policies and regulations should be implemented in ways that do not inhibit adaptation to changing markets and technologies.

My submission firstly addresses what I believe to be the most relevant elements of this Inquiry’s set of principles.

3. COMMENTS ON THE INQUIRY’S PRINCIPLES

a) Public interest

I note the emphasis on public interest across a number of these principles, which I agree is quite appropriate. However, as the NSW Ombudsman has noted, the concept of public interest, while widely invoked, “is arguably the least defined and least understood” concept in public administration, and one that is widely contested. A key question is how it should be assessed in this case, and I suggest that there are a number of useful approaches.

i) *Revealed preferences*

One measure of public interest is that revealed by the choices that individual members of the public make. I understand that reputable studies confirm that in any given week a high proportion (around 70%) of the Australian population access some ABC or SBS services, and many more consume ABC and SBS material indirectly on other media such as Facebook and Google. No other Australian media outlets approach this breadth of access. This suggests that it is in the interests of at least this large proportion of the public to have unfettered access to public broadcasters.

ii) Monetary value

Another measure of public interest would be the monetary value people place on public broadcasting. I am not aware of any credible research to estimate the value that Australians place on our public broadcasters, but this work has been undertaken in some countries. For example, the value placed by the British public on the BBC, probably the closest equivalent broadcaster to the ABC, has been estimated at over GBP170 per person (in current prices). This is considerably more than the ABC receives from government, and might be considered as a rough proxy for Australians' valuation of public broadcasting until or unless similar Australian research is undertaken. (The inquiry may wish to recommend that this be done.)

iii) Trust

Another measure of value would be the level of the public's trust in an institution. The ABC is consistently rated as easily the most trustworthy media organisation in Australia – surveys have regularly found that around 80% of the population consider it to be highly trustworthy. (And it is worth noting that the ABC retains this broad trust in spite of relentless campaigning against it from a few politicians and other media organisations.) This must be seen as another strong indication that most people believe that the organisation operates in the public interest. I would guess that there would be a similar level of trust for SBS from its more targeted audiences. In an era of “fake news”, where the reliability of information deteriorates as rapidly as the volume expands, I suggest that the value of trust in media organisations (and in fact in public institutions) is becoming even more important.

iv) National public interest

These previous approaches are all relevant ways of looking at the public interest, but are largely individualistic in their perspective. Another important consideration comes from a “national” public interest perspective – i.e. what does public broadcasting contribute to the nation as a whole?

It is only the ABC, for example, that serves much of regional Australia – remote areas, small towns, farmers, indigenous communities, mines - each small populations that would not by themselves justify a commercially-based service. Having lived for some years in a remote part

of the country I have personal experience of the vital role played by ABC radio and TV – in reducing isolation, but also for protection during cyclone seasons. Maintaining broadcasting to these areas are important for reasons of equity and inclusion, but also to allow key parts of our economy to operate, and for our national security. SBS plays a similar role in helping migrant communities communicate together, and to understand and feel part of Australia.

Importantly, all of these ABC and SBS services (radio, broadcast TV, on-demand TV, online written and video material) are available and accessible free of charge to all Australians – a significant contribution to a well-informed public, maintaining a sense of national identity across distance and cultural diversity, and a contribution to equity at a time when other forces are leading to increased fragmentation, alienation, inequality and a diminution of trust. This, surely, is in the public interest for us individually and as a nation.

v) *National public interest - internationally*

While the previous points have focused at the domestic level, our national public interest is also served by the way we project Australia to the world. Far more than other Australian-based media, ABC radio (including podcasts) and ABC's online presence is seen to represent the nation to the world, and provides a valuable source of news and Australian culture to global audiences. The fact that a publicly-funded broadcaster is independent and can carry criticism of the government of the day is a potent symbol of democratic openness when many countries are experiencing growing authoritarianism. The quality and reliability of the ABC's programs and the projection of Australian values shape the ways that other nations see us, with implications for many aspects of our economy and for our ability to influence regional and global thinking. Again, free and open access to the ABC's content promotes this communication.

These comments should not be taken to suggest that commercial media do not often operate in the public interest. In many ways they clearly do – but, I would argue, to a much more limited extent. The first and ultimate priority for any commercial media organisation must be, quite properly, to meet the interests of its owners (shareholders), so maximising audiences is the primary objective. Second to this must come avoiding giving offence to advertisers and company's owners' other interests (of which there are usually many). Clearly, these very legitimate interests must often override any other considerations of public interest, no matter how principled the management and staff may be. (The recent inquiry into Australian financial institutions has been the latest reminder of how easy and often commercial priorities override both professional standards and public interest – even when the organisations involved are not under severe financial pressures, as is the case in the media industry at the moment.)

The point of dwelling on this issue of public interest is to emphasise that, as the Harper Report made clear, ultimately competition policies (and therefore competitive neutrality principles) are simply one way of promoting the public interest. If and when competitive neutrality principles clash with broader public interest, the latter should take precedence.

b) Promoting efficiency

The entry into the Australian media landscape by international media organisations such as Google, Facebook and Netflix brought by far the biggest contribution to the increase of “efficiency” of the traditional media industry – assuming that the measure of increased efficiency is delivering more output for lower costs. This is because it forced the traditional media to respond by shedding staff and changing production methods. Few would disagree that this has come at the expense of quality and reliability, or that it has promoted concentration of ownership and production.

Public broadcasting made little or no contribution to this shakeup in the private media world. But after largely failing in their competition with the newcomers for advertising revenue, the older media organisations now appear to be looking to gain a few crumbs by attacking what they see as the softer targets of ABC and SBS. In particular, on-demand television and the ABC’s online news and commentary are seen as sources of customers -- and thereby, they hope, advertising revenue. Although ABC Online’s readership numbers are below both News Corp or Fairfax’s sites, these companies would like to see ABC on line removed, made less attractive, or only accessible via a paywall. I do not believe that such paywalls would do much for the revenues of these organisations, and they would make no contribution to improved efficiency.

The ABC responded to the challenge of the new media by increasing cross-platform efficiency, so that ABC Online now integrates material from radio and TV. The removal or diminution of ABC online, or placing limitations on its ability to maximise cross-platform activities, would therefore reverse efficiency gains made at the ABC, and would clearly go against an industry trend of the integration of news and current affairs across platforms. This latter point is relevant to the Inquiry’s principle that changes to regulations or policies should occur in ways that “do not inhibit adaptation to changing markets and technologies”.

c) Promoting choice

I believe that most people preferentially choose ABC (and SBS) material for a combination of four reasons:

- Reliably high quality of content
- Diversity of content - *which other organisations cover topics as diverse as business, religion, sport, politics, science, international affairs, indigenous issues, etc across so many forms of media?*
- Absence of intrusive advertising – *this is more than an annoyance, and while parents are particularly concerned about advertising’s influence on their children, many adults are also aware of how subtly influential advertising can be for us too⁴.*
- Integrity – *confidence that the material has been presented in a relatively unbiased way, without pressure to sensationalise for ratings, appeal to the interests of advertisers, or avoid criticism from powerful interests.*

Commercial providers are under pressure to maximise the size of their audience/consumers at any given time, and so tend to deliver material that they believe has the best chance of attracting the largest audiences. This often tends to reduce diversity. In contrast, the ABC (and to a lesser extent SBS) is not as subject to these pressures, and this helps it provide the broader range of programming. A continued healthy public broadcasting system is therefore essential if consumers are to continue to have a broad choice of broadcast material.

d) Transparency by government entities for accountability

I agree with the Inquiry’s principle that emphasizes accountability by government entities, and believe that a high level of transparency is a necessary (although not sufficient) condition for accountability.

It has been enlightening to see that the ABC’s annual reports provide considerably more information about the organization and its performance than can be obtained from the annual reports of the main Australian commercial media organisations – and attempting to find out much about Facebook, Google and Netflix is even harder!

The ABC already receives considerably more external scrutiny than any of the domestic commercial media organisations – scrutiny by other media, by politicians, by ABC Friends, and by antagonistic critics. Only public broadcasters need to defend their decisions and actions before Senate Estimates. And no other media organization undertakes the kind of public self-scrutiny often found on ABC’s *Media Watch* and *Media Bites* programs.

⁴ I have to say that I often find that the ABC’s own “internal” advertising on television and radio is excessive, repetitive and annoying – but then I realise how much worse the commercial broadcasters are!

However, I agree that standards of transparency and accountability should be even higher for public broadcasters. I suggest for the ABC, for example

- a more public process and greater accountability in the selection of ABC Board members and the chief executive
- a more open process for the selection of members of the ABC's Advisory Council, and a strengthening of its role of so that it can truly scrutinize the organization from the perspective of consumers and the public
- instituting special parliamentary appropriations of ABC budgets.

However, some other calls for transparency – such as making public the salaries of ABC presenter and senior staff – are clearly intended to breed resentment towards the ABC, and should be dismissed - unless such expectations are to be applied to all other media organisations.

I would argue that commercial media organisations also owe the public a degree of accountability, particularly to the extent that they use public property (e.g. the broadcasting spectrum, the internet) and receive other public benefits – the recent \$30 million grant to one organization for sports coverage being an example. However, in practice these other media organisations have minimal accountability, except to their shareholders.

While it is probably beyond the Inquiry's terms of reference, I believe that there are grounds for stronger mechanisms for dealing with complaints from all media organisations.

I now make some comments on the specific issue of competitive neutrality.

4. COMPETITIVE NEUTRALITY

The Inquiry's Issues paper defines competitive neutrality (CN) as a situation where “no entity operating in an economic market is subject to undue competitive advantages or disadvantages”. This raises a number of questions in relation to public broadcasting.

a) Is it really the same market?

The first issue here must be whether or not the public broadcasters are operating in the same “economic market” as and are in direct competition with the commercial media organisations. Commercial media organisations' main objective is to sell advertising, and (whatever subsidiary motivations the organisations or their staff may have) the content they carry is ultimately designed to maximise advertising revenue. The ABC does not seek advertising revenue, so is obviously not participating in that particular marketplace. There is therefore only partial competition – for audiences, rather than advertisers.

The argument for direct competition also assumes that there is a high level of substitutability between the products of public and commercial broadcasters. I do not believe this is the case.

Most ABC (and much of SBS) programming is qualitatively different from that of commercials – the range of material is much wider, serious content is much more common, and on many criteria (including journalism and other awards, public impact) quality is substantively higher. A very high proportion of the top rating TV programs (around 80%) are either sport or reality TV. These are not program types that the ABC covers, and much of SBS’s sport has a specialty focus. One would search in vain on commercial platforms for the serious and in-depth treatments of religion, economics, philosophy, books or science that are standard ABC fare.

These qualitative differences mean that the content produced by public broadcasters and their commercial counterparts is often targeted to different audiences, and it is inappropriate to treat them as simply direct competitors producing an equivalent product with government funding. Public broadcasters are only in competition to the limited extent that they seek to attract audiences who would otherwise go to commercial operators.

b) How should we balance advantages and disadvantages

As all players in the media market possess a range of advantages and disadvantages – from the nimbleness of small organisations like Crikey to the global networks available to News Corp - the issue for CN must be what should be considered “undue (dis)advantages”, and where the balance falls.

What are the real advantages of public broadcasters (vis-à-vis commercial broadcasters? I think that there is only one:

- The vast bulk of public broadcasters’ revenues are derived from the government, with a reasonable degree of certainty about the level of funding across any given funding triennium.

What disadvantages do public broadcasters face, vis-à-vis commercial broadcasters?:

- Little opportunity to influence funding levels, and subject to “efficiency dividends”, budget cuts, cancellation of indexed funding.
- Fewer opportunities to obtain funds from the other sources available to commercial media – such as
 - cross-subsiding from other more lucrative ventures
 - raising capital on domestic and global financial markets leveraging their international ownerships and alliances
 - erecting paywalls
 - utilising international ownerships to facilitate tax minimisation.
- Responsibilities to fulfil requirements of the Charter in relation to content and coverage, combined with high expectations from consumers about program quality
- More restrictions on hiring and firing of staff due to public sector status than commercial organisations.
- Subject to much more public scrutiny and criticism than any commercial media (and therefore needing to devote resources to reducing and responding to this criticism.

How does one attempt to balance these various advantages and disadvantages? Looking at this list it seems clear to me that, to the limited extent that they may compete directly with the commercials, public broadcasters face significant disadvantages. And surely the fact that the Australian Government Competitive Neutrality Complaints Office has only ever received one complaint about the ABC, which was dismissed, must suggest that commercial media have not felt that they face any substantive disadvantages. (And of course the limitation of free-to-air television licenses was a competitive advantage that the existing operators enjoyed for many years, never suggesting that this may be unfair to others who may have wished to enter this market!)

c) Can Australian commercial organisations compete?

The media business is in a difficult phase, and it is likely that some companies may be forced to merge, sell or close – unfortunate, but perennial feature of competition in the private sector. However, some commercial media organisations in Australia can still clearly turn a profit in the face of this. For example, in August 2017 *The Australian* announced an operating profit of \$13m, which CEO Nicholas Gray attributed to “growing paid subscribers, marketing and focusing on a strong online presence”, including around 100,000 paid digital subscribers⁵. And while Nine Entertainment is currently in the red, CEO Hugh Marks is confident that its on-demand businesses (more than 2.9m registered users) and ability to assist advertisers to more effectively target audiences and will shortly deliver profits.⁶ So in spite of their complaints about public broadcasters, some commercial media are able to survive and prosper.

d) And who are the “Australian” commercial media companies anyway?

Much commentary by media organisations implies that the competition is between lavishly funded public broadcasters and plucky little private Aussie media organisations battling to make a living. If this was ever true, it is no longer, as Australia is just one small component of a global media marketplace.

News Corp is part of a large international multi-media, multi-sector operation; Fairfax was almost bought by international bidders last year and further bids are likely in the future; Channel 9 is owned by Hong Kong-based equity firm CVC Asia Pacific, Channel 10 by American CBS Corporation, etc. Those not yet foreign-owned are likely to be targeted by investors with deeper pockets whenever opportunities arise. So most “Australian” media companies are in fact commodities that are traded on international markets, with diminishing roots in or commitment to Australian culture or values. When seen in this context, ABC and SBS are at best medium-sized players, but lacking the international connections of many of the commercials.

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[https://myaccount.news.com.au/sites/theaustralian/subscribe.html?sourceCode=TAWEB_WRE170_a_GGL&mode=premium&dest=https%3A%2F%2Fwww.theaustralian.com.au%2Fbusiness%2Fmedia%2Fdigital-focus-puts-the-australian-back-in-the-black%2Fnews-story%](https://myaccount.news.com.au/sites/theaustralian/subscribe.html?sourceCode=TAWEB_WRE170_a_GGL&mode=premium&dest=https%3A%2F%2Fwww.theaustralian.com.au%2Fbusiness%2Fmedia%2Fdigital-focus-puts-the-australian-back-in-the-black%2Fnews-story%2F)

⁶ <https://mumbrella.com.au/nine-profit-revenue-weaker-expected-start-financial-year-428420>

But even these organisations are obviously minnows in comparison to the real juggernauts in the media world – the likes of Facebook, Google and Netflix. These are the real strategic competitors to those commercial companies with Australian roots, and their dominance is likely to increase with the convergence of content producers and platforms (witness the recently announced merging of AT&T and Time Warner, for example). Can we really believe that our own small ABC and SBS are unfairly competing with these global giants? If anything, the public broadcasters are our strongest line of defence against an international environment where decisions are made elsewhere, and for other interests, and where domestic competitive neutrality considerations are largely irrelevant.

e) Summary of CN issues

In working through these issues of competitive neutrality, I have argued that the nature of the public broadcasters (and particularly the ABC) and their offerings shows that they're not really operating in exactly the same market as the commercial broadcasters, so it is only legitimate to apply the CN test to a very limited extent and with significant caveats. When CN is considered it becomes clear that the commercials have a significant number of advantages not available to ABC or SBS. The case for "unfairness" is therefore quite weak. Moreover, as Australian-based media learn to compete with Facebook, Google and Netflix, they are starting to evolve new business models that can be profitable, further weakening any claims to unfairness. But we also need to recognize that while most of these companies still claim to be Australian, in fact their ownership and allegiance are now increasingly international. Competitive neutrality therefore needs to be considered in this global context, where any perceived advantages held by ABC and SBS are swamped by mega-corporates and grand alliances. In this environment we can only be confident of the public broadcasters as the organisations truly committed to Australia's interests.

5. CONCLUSION

The Inquiry's terms of reference also invite "observations on the role of national broadcasters in the modern media environment". Much of the preceding commentary covers this. However, I would also like to make the point that Australia has a mixed economy, reflecting a long term recognition that there are often economic and social benefits to be obtained by having both private and public sector organisations complementing each other. This is clearly the case in fields such as health, education, scientific research, the provision of utilities – and I suggest also in broadcasting. The strong public support for this mixed model has been made clear when attempts have been made to dismantle Medicare, in continued funding of public hospitals and schools – and the level of support for the ABC and SBS.

The recent publication *Against Public Broadcasting*⁷ emphasizes the disadvantages and risks associated with public organisations that are not fully exposed to market pressures. The authors' underlying assumption is derived from public choice theory, which sees people as all essentially selfish, atomistic economic actors responding only to financial incentives, and considers that markets always operate to maximise public interest. This leads to a one-dimensional view that fails to recognise the benefits that public (and charitable) institutions bring to the economy and society in general, and overlooks the disadvantages and risks from purely private sector, market-based systems. We only need to look at, for example, the poor outcomes resulting from the move to expand private vocational colleges at the expense of TAFEs, and the high rate of complaints from the private health system – let alone the recent banking royal commission – to see that market systems do not always operate in the interests of individual consumers, let alone the public interest.

This Inquiry has been charged with making decisions on technical policy matters, but in a highly charged political environment. Veteran journalist Laura Tingle recently commented on the unrelenting attacks on the ABC, and noted that from her perspective of 37 years working for Fairfax and News Corp and one month working for the ABC that “the case that public broadcasting has never been more important”⁸.

My submission has attempted to consider the Inquiry's task within the broader field of competition policy, which in turn is one element of policies to promote the public interest. I think I have shown that on competitive neutrality grounds alone the case that public broadcasters possess unfair advantages is quite weak. But more importantly, it is clear that from a range of perspectives and in a number of ways the ABC and SBS make major contributions to the public interest. Australia be a poorer, narrower, more divided and less thoughtful nation without these two public broadcasters – or if narrow partisan interest were allowed to further undermine them.

⁷ Chris Berg & Sinclair Davidson, 2018, *Against Public Broadcasting: Why we should privatise the ABC and how to do it*, Connor Court Publishing, West End.

⁸ Laura Tingle, 9 June 2018, *Why the ABC is a political football*, ABC Online