

# Submission to the Inquiry into the Competitive Neutrality of the National Broadcasters

22 June, 2018





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# 1 Introduction

The Special Broadcasting Service Corporation (SBS) welcomes the opportunity to participate in the Inquiry into the Competitive Neutrality of the National Broadcasters (the Inquiry) and to comment on the Inquiry Issues Paper (the Issues Paper) dated 26 April 2018.

Given the focus of the Inquiry, SBS commissioned Deloitte Access Economics to consider aspects of the application of competitive neutrality to its operations. The Deloitte Access Economics report, *SBS: Report on aspects of Competitive Neutrality*, is incorporated into the SBS submission to address questions outlined in the Issues Paper.

Australia has been, and continues to be, built on migration. SBS was established over 40 years ago out of a community necessity to interpret healthcare policy in languages other than English for post-war migrants to Australia. From that time, SBS has existed to contribute to the ongoing development of a vibrant and cohesive multicultural society by providing a holistic suite of multilingual and multicultural radio, television (TV) and more recently, digital media programs and services that inform, educate and entertain all Australians. In doing so, SBS distinctly reflects Australia's Aboriginal and Torres Strait Islander cultures and multicultural society.

Over four decades SBS has evolved to be a modern, dynamic, multiplatform and hybrid-funded public broadcaster, and Australia's most culturally and linguistically diverse media organisation.

As Deloitte Access Economics notes in its report:

*When SBS commenced full-time transmission in 1980 it faced competition from the ABC and a small number of analog commercial free-to-air providers (FTA). TV competed for the eyes and ears of the Australian public against the (Australian) print media and radio networks, but the boundaries of these markets were distinct and geographically defined. Today these boundaries are much broader, much more opaque and in some instances arguably no longer exist.<sup>1</sup>*

SBS today provides news, programs and services across the increasing platforms and devices available, and ensures mainstream multicultural Australia has access to diverse perspectives. SBS is uniquely positioned to draw on its insights and connections to communities throughout Australia to tell stories in depth across its ecosystem of media platforms which cater to the evolving media consumption methods of its varied audiences.

SBS broadcasts four free-to-air television channels: the SBS main channel, National Indigenous Television (NITV), SBS VICELAND and Food Network. It provides news services that are highly esteemed and regularly ranked among the most trusted in Australia,<sup>2</sup> alongside long-running and esteemed current affairs programs. Extensive radio, online and digital media, news and programs service 68 different language speaking communities across three radio networks, more than any other broadcaster globally, as well as reflecting world music culture. SBS works effectively alongside Australia's independent production sector to commission local programs in factual, food, drama and entertainment genres, and acquires programs globally to enhance the distinctiveness of its services, and provide diversity of choice for Australian audiences.

Today, one in two Australians has a migrant background, nearly 20 per cent speak a language other than English at home and 28 per cent of Australians were born overseas.<sup>3</sup> Given the struggle of governments globally to integrate diverse communities harmoniously, as the nation's multicultural broadcaster, SBS must share the value of multiculturalism and diversity with all Australians to contribute to social cohesion in Australia, as was intended by the Parliament when SBS was created.

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1 SBS: Report on aspects of Competitive Neutrality, Deloitte Access Economics, June 2018, Appendix 1.1, pg14

2 <http://www.essentialvision.com.au/trust-in-media-13>; <http://www.essentialvision.com.au/trust-in-media-12>

3 2016 Census, <http://www.abs.gov.au/websitedbs/censushome.nsf/home/2016>

# Executive Summary

SBS has grown and evolved alongside decades of national government policies to advance Australia as a successful multicultural society, by ensuring audiences can access diverse and alternative media that reflects the changing demographics of their Australian community. Australia as a whole benefits from the commitment of successive governments to direct public funding to a dedicated multicultural broadcaster.

What makes SBS different from other media providers is its founding principles that the public interest is best characterised by a plurality of views and perspectives in the media, and that a cohesive multicultural society is best served when cultural diversity is at the forefront of the national conversation.

Mainstream Australia today is multicultural. That Australia's diverse communities can access different, distinctive media that enhances their participation in Australian life is a direct outcome of SBS's commitment to the SBS Charter.

The SBS Charter, contained within the Parliament's expression of purpose for SBS, the *Special Broadcasting Service Act 1991* (Cth) (the SBS Act) states that the principal function of SBS is to:

***“provide multilingual and multicultural radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.”***

SBS has been committed and accountable to multicultural and Aboriginal and Torres Strait Islander communities for over 40 years. These communities remain SBS's principal focus today.

The SBS Charter specifies that SBS must also “...inform, educate and entertain **all Australians**” in order to increase awareness and promote understanding about the benefits of cultural diversity for the community as a whole. In addition to the statement regarding SBS's principal function, this is made clear through the requirement in paragraphs 6(2)(b) and (c) of the SBS Act that SBS must:

...

*(b) increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society; and*

*(c) promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people;*

...

This Inquiry affords SBS an opportunity to demonstrate that the public interest responsibilities conferred on the organisation in the SBS Act remain at its heart today.

The SBS Act, the SBS Charter and related regulatory frameworks and legislative limitations guide the strategies, policies and processes of SBS that enable it to deliver trusted, distinctive and culturally diverse programs and services for all Australians. The SBS Charter also enables SBS to evolve its services in accordance with the changing media needs of multicultural Australia.

However, constraints within the SBS Act, in particular the limitations enforced on advertising activities, mean that SBS's capacity to successfully compete with commercial counterparts is severely restricted, even though it must operate within a highly commercial environment, with limited funding. With a 0.6 per cent share of Australia's total advertising market, SBS's very small share of advertising fails to meet a materiality threshold for SBS to compromise competitive neutrality principles.

# Executive Summary (cont)

SBS's differentiation from other media providers arises from the rigorous processes it follows to deliver distinctive content to all Australians in accordance with its Charter and in keeping with the responsibilities of the SBS Act. But these constraints also mean that SBS lacks material market influence in the content and audience markets in which it must compete with commercial counterparts. In practice, SBS is actually operating at a significant competitive disadvantage in many aspects of its market dynamics.

A 10 point summary of SBS's competitive limitations is outlined below to demonstrate that SBS has no market power in Australia's media market.

1. **The SBS Act and SBS Charter requirements:** Under the SBS Act, SBS must attract and retain its diverse radio, television and online audiences whilst achieving its highly distinctive mission. SBS must achieve these objectives whilst operating within a fiercely competitive media market. SBS is dwarfed by substantially larger domestic operators who have up to four times its scale and market share, in addition to the increasing number of global entrants who are heavily influencing the domestic market.
2. **Public interest responsibilities:** SBS is a public broadcaster. The provision of SBS services meets the public interest by ensuring media diversity and delivering on SBS's purpose of promoting social cohesion, but there is little commercial incentive to provide these services. That the Commonwealth Government directs public funds to SBS to ensure media diversity is indicative of the outcome for audiences if the free market were relied upon to provide culturally and linguistically diverse or Indigenous-focused services. Where SBS provides these services in accordance with the SBS Charter, commercial operators are free to focus on any content that can attract broad audiences.
3. **Advertising income:** Due to the advertising cap of five minutes per hour on broadcasting services, in the SBS Act,<sup>4</sup> SBS cannot generate as strong a business case for content acquisitions in terms of return on investment as its free-to-air commercial television competitors. With a 0.6 per cent share of the entire Australian advertising market, restrictions that impact on the advertising appeal of its content as well as the changeable government funding environment for public broadcasters, means SBS operates at a significant competitive disadvantage when funding its content budget.
4. **Capital scale and leverage:** With limited funding, SBS does not have balance sheet scale for capital and debt leverage to compete with its commercial counterparts who, due to their Australian Stock Exchange (ASX) listed shareholding or foreign-owned capital base have significantly more leverage and agility to make longer-term larger-scale content acquisitions. SBS is also unable to freely take on private debt. The average content budget of an Australian free-to-air commercial operator is six times as large as that of SBS.
5. **Competition complaints:** Compared to its competitors SBS is also restrained from unfettered competitive freedom due to the ability of competitors to complain against SBS when it is successful in attracting substantive audiences and the strict legislative and regulatory frameworks that apply. It is relevant to note that no complaint about SBS on issues of competitive neutrality has been made to the Competitive Neutrality Complaints Office, which is the Government body tasked with addressing such concerns. Competitive neutrality was not raised during the extensive ABC and SBS Efficiency Study led by Peter Lewis in 2014, which found SBS to be a lean and efficient organisation, with established prudent business practices to extract value from its investments in favour of the Australian community.

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4 Paragraph 45(2)(b) SBS Act

6. **Commercial appeal of content.** SBS's content strategy is directed to fulfillment of the SBS Charter. It is impossible for SBS to acquit its obligations without occasionally broadcasting programs which may also appeal to other broadcasters or content providers. Typically when programs become popular, SBS's small budgets mean that it can no longer afford to retain rights and mostly cannot afford to secure the most popular international programs. This is in comparison to the commercial networks which can outbid SBS and monetise programs to a much greater extent, given they have up to three times the available advertising inventory. All of this said, it should be emphasised that SBS is not legislatively limited to programs that no other media provider wants to broadcast. If this were the case, SBS would be a market-failure operator. This would not be in the public interest and was not the Parliament's intention when SBS was established.
7. **Accountability and transparency:** SBS's management is accountable to the SBS Board appointed by the Commonwealth Government, and ultimately to the Australian Parliament and Australian taxpayers. SBS management must appear regularly at public Parliamentary hearings (Senate Estimates), and SBS is subject to Freedom of Information (FOI) requests. SBS also has a range of measures to ensure that it is accountable to the communities it serves, including via the Community Advisory Committee, regular community consultations, and a structured audience feedback program.
8. **Editorial control:** SBS must maintain full editorial control over its content output and this restricts the content arrangements it can establish with third-party content providers. Distinct from its commercial counterparts, SBS cannot have content largely funded by advertising sponsorships (which are restricted on SBS by its strict Codes and Editorial Guidelines). Commercial operators are free to access funds, support, stories and participation from high-profile figures by proffering editorial control. SBS is also not able to offer advertisers the level of integration into programming that is the norm from competitors. In practice, this forms many sponsorship, brand-funding and advertising relationships in commercial environments.
9. **Distinctiveness from the ABC:** SBS is required by paragraphs 6(2)(g) and 10(1)(f) of the SBS Act to take account of the ABC's services and to co-operate with the ABC in the pursuit of media diversity for the Australian community. SBS carefully considers its programs and services and works collaboratively with the ABC to adhere to these requirements. Commercial broadcasters by comparison do not have any requirements to consider another broadcaster or content providers' content offering in designing their TV schedules and/or suite of services.
10. **Attract and retain talent:** SBS cannot adopt the same terms and conditions as its commercial television competitors to attract and retain employees and broadcast talent due to constraints regarding employee remuneration. SBS is often the training ground for media practitioners who go on to work for other media organisations in Australia and abroad. SBS employees are often recruited to other commercial operators.

Deloitte Access Economics notes in its report that:

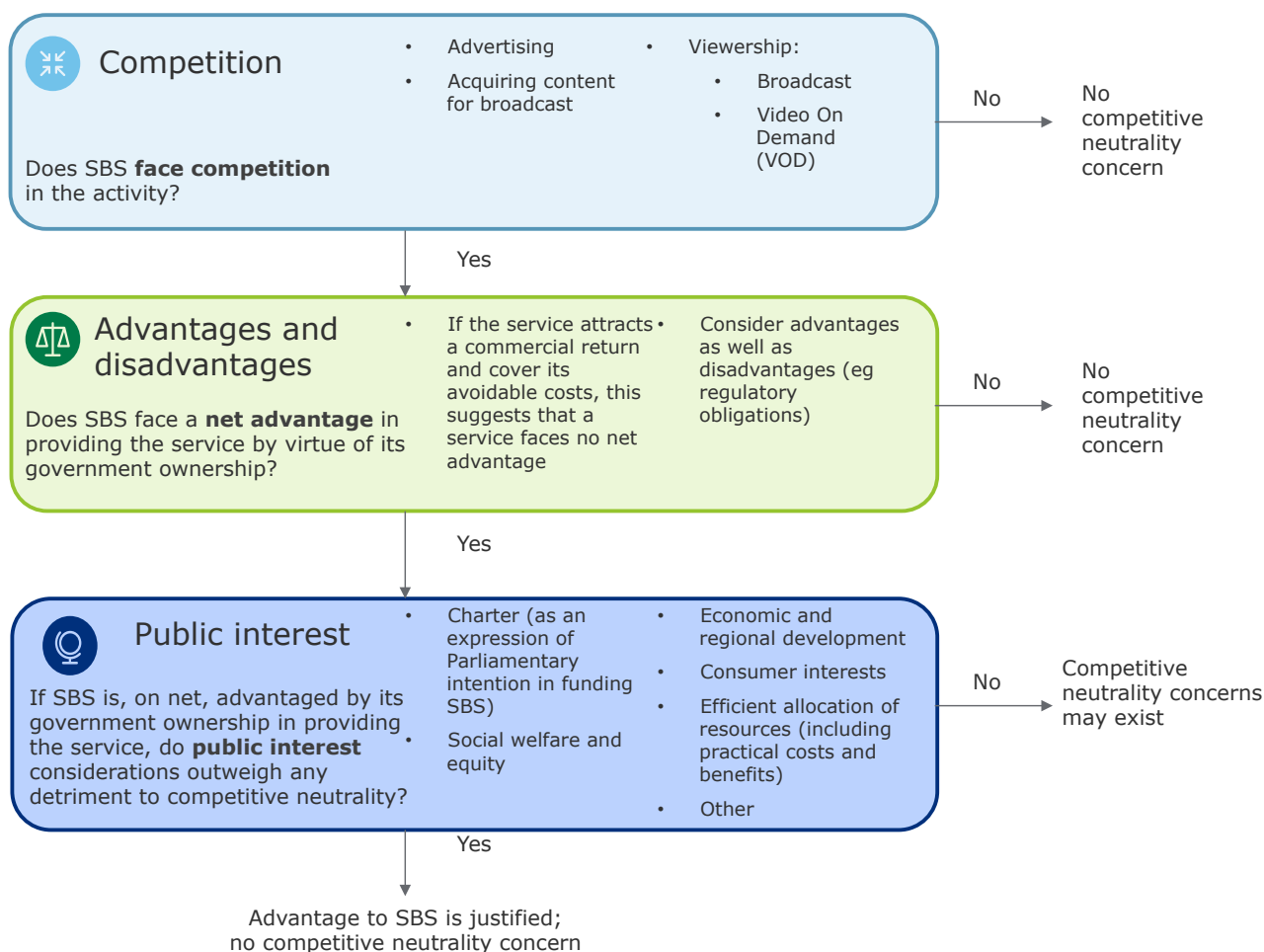
- *Against this broader market context, SBS is the smallest player in the free-to-air (FTA) television market with a current prime time market share of 7.3%. While its market share increased with the introduction of SBS VICELAND and Food Network, both attract around only 1% of the overall prime time viewing market, while the market share of NITV is around 0.2%.*
- *In terms of advertising revenue, SBS currently has the smallest share of the declining FTA television advertising market (approximately 2%) and a much smaller share of the overall FTA television and online advertising market. Its influence on competitive outcomes in terms of viewership and advertising is commensurately low.<sup>5</sup>*
- *Overall, the trajectory of regulatory changes in recent years have broadly favoured the commercial FTA broadcasters relative to the national broadcasters.*

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<sup>5</sup> SBS: Report on aspects of Competitive Neutrality, Deloitte Access Economics, June, 2018.

# Executive Summary (cont)

Deloitte Access Economics has developed the following framework for assessing whether SBS's activities raise competitive neutrality concerns. Its assessment of SBS's activities is summarised on page 16 and in depth in Excerpt 2 on page 70.<sup>6</sup>



Having regard to the Deloitte Access Economics framework and analysis provided by Deloitte Access Economics in this submission, and given the specialised focus of SBS's content, the competitive disadvantages that prevent SBS from being a threat to the commercial sector and the extensive public interest associated with SBS's services, SBS is confident that it is operating within competitive neutrality principles.

<sup>6</sup> SBS: Report on aspects of competitive neutrality, Deloitte Access Economics, June 2018, Appendix 1.1, pg9.



A summary of SBS's position on the questions posed in the Issues Paper by the Panel undertaking this Inquiry is provided below.

### **Issues Paper Question 1**

What awareness is there in your organisation of the requirement to undertake a "best endeavours" approach to complying with the Competitive Neutrality Policy? What organisational policies and processes are in place?

***SBS's commitment to the SBS Act and its related policies and frameworks means that SBS is also alert to competitive neutrality principles. There is a high degree of awareness amongst Executives and senior management of the requirement for a "best endeavours" approach to competitive neutrality principles.***

This submission demonstrates that SBS has robust strategies, policies and procedures in place to deliver on the requirements of the SBS Act and the SBS Charter to service the Australian community with a diverse media offering. Further, there is no evidence to indicate that SBS is not operating consistently with competitive neutrality principles.

SBS gives primacy to the public interest objectives of the SBS Act, and requirements of the SBS Charter. All SBS policies are set and decisions evaluated with reference to the SBS Act, and in particular:

- The SBS Charter as set out in section 6;
- The role of the SBS Board of Directors to ensure that SBS performs its functions in a proper, efficient and economical manner and with maximum benefit to the people of Australia as set out in section 9;
- The duties of the Board set out in section 10;
- The powers and duties of SBS set out in section 44; and
- Advertising powers set out in sections 45 and 45A.

The need for the SBS Board of Directors to ensure the integrity and independence of SBS, the need for SBS to link its activities to delivery of the Charter's principal functions and the need for SBS to abide by broader regulatory and legislative constraints (including its restricted advertising rules) form the strategic and operational blueprint for the organisation.

In addition, systems and protocols that SBS has in place (for example, to comply with legislative obligations such as those required by the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act)) and its efficient operating model, mean that SBS participates in the relevant markets from a constrained position, rather than one that is unfairly bolstered by Government funding. These matters are explored further in the response to Issues Paper Question 2.

This is also in addition to the general accountability mechanisms that apply to SBS, including to the Parliament via the tri-annual Senate Estimates processes, and to the communities that SBS serves.

In line with principles of competitive neutrality, the constraints arising from these requirements not only limit SBS's competitiveness, but safeguard against advantage resulting from government funding. Further, SBS is confident that the extensive public interest benefits of SBS's fulfilment of its obligations under its Charter align with competitive neutrality principles.

# Executive Summary (cont)

Further, the SBS Executive and senior management are alert to competitive neutrality principles and SBS has extensive organisational processes in place which deliver outcomes consistent with its Charter and Act. Whilst SBS is legislatively enabled to be competitive, Executives and senior managers understand their obligations to ensure activities are aligned to the Charter, and in the public interest.

## Issues Paper Question 2

What approach is used by your organisation to consider issues of competitive neutrality when commencing new activities or entering new markets? Are there examples of how this has been applied?

***The SBS Act guides the commencement of all new activities. Principles of competitive neutrality are addressed by SBS when entering new activities or entering new markets by giving primacy to the SBS Act. A case study outlining SBS's approach to new activities is contained within this submission on page 28.***

As the touchstone for all organisational activity, the SBS Act also guides consideration of new activities. The SBS Board of Directors specifically considers proposals in strict accordance with its duties under the SBS Act and with reference to the obligations within it, specifically the SBS Charter. The SBS Charter means that SBS must be diverse and distinctive. It constrains SBS's competitive capacity, and prioritises services that inherently deliver in the public interest. This aids SBS to operate in accordance with principles of competitive neutrality.

In particular:

- SBS enters new activities only when there is an opportunity to enhance and improve overall delivery of requirements under the SBS Charter; in the case of audience engagement on digital platforms, this involves extending the reach and fulfilment of local content aspirations. This maximises public interest outcomes, consistent with competitive neutrality principles;
- SBS commences a new activity only if it determines that there is market demand within the Australian community that also aligns with SBS's objectives to maximise delivery on the Charter. This minimises overlap with other networks, noting that SBS is legislatively enabled to be competitive and that competitive neutrality principles do not prevent SBS from being competitive;
- In most cases where new activities present opportunities to increase own-source revenues, SBS will enter into an activity only where the marginal cost of doing so will be covered by incremental revenue increase arising from that activity. This helps to ensure that SBS is not relying on its government ownership in competitive markets (noting that many new SBS activities are not propositions that would attract commercial return in any event, for example the recently launched Rohingya digital language program); and
- New activities should also align with SBS's ability to leverage its innovative and agile workforce to enhance delivery of the SBS Charter.

All decisions of resource allocation must be subject to:

- A full business case proposal considered by a committee of senior finance, project management and operations personnel, including testing the veracity of financial data;
- Assessment via a dedicated monthly committee of Executives charged with overseeing the organisation's content strategy to ensure it reflects responsibilities in the SBS Charter and delivers on strategic objectives aligned with SBS's focus on distinctiveness;
- Assessment and endorsement by the Senior Executive team and Chief Executive Officer;
- In the case of significant investments or new strategic initiatives, these must be presented to the SBS Board of Directors for review and endorsement; and
- Ongoing periodic reporting on budget and key performance metrics to the Senior Executive team.

#### **Issues Paper Question 5**

In view of the general principles of competitive neutrality what relevance does the SBS give to Section 2(g) of its Charter that the SBS in relation to its radio and television services “contribute to the overall diversity of Australian television and radio services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the community broadcasting sector.”?

***SBS gives extensive consideration to all requirements of the SBS Charter, including the requirement to contribute to the overall diversity of Australian media services across the suite of its programs and platforms, particularly taking into account the contribution of the ABC and the community broadcasting sector.***

Delivering a distinctive network is the first strategic pillar in SBS's Corporate Plan, reflecting the responsibilities of the SBS Charter, which ensures a diverse Australian media sector. The Charter is a legislated mandate, principally funded by the taxpayer, to deliver on a market need for multicultural and multilingual content and alternative programming, as well as providing content to inform, educate and entertain all Australians to build understanding and reflect Australia's multicultural society.

In making content decisions, SBS always has regard to paragraph 6(2)(g) of the SBS Act (the Charter) in order to safeguard against overlap with the services provided by the ABC and community broadcasting sector across both radio and television, including the Indigenous community broadcasting sector. This ensures maximum value for the Australian community, as public funds are directed to a range of complementary, rather than competitive, services.

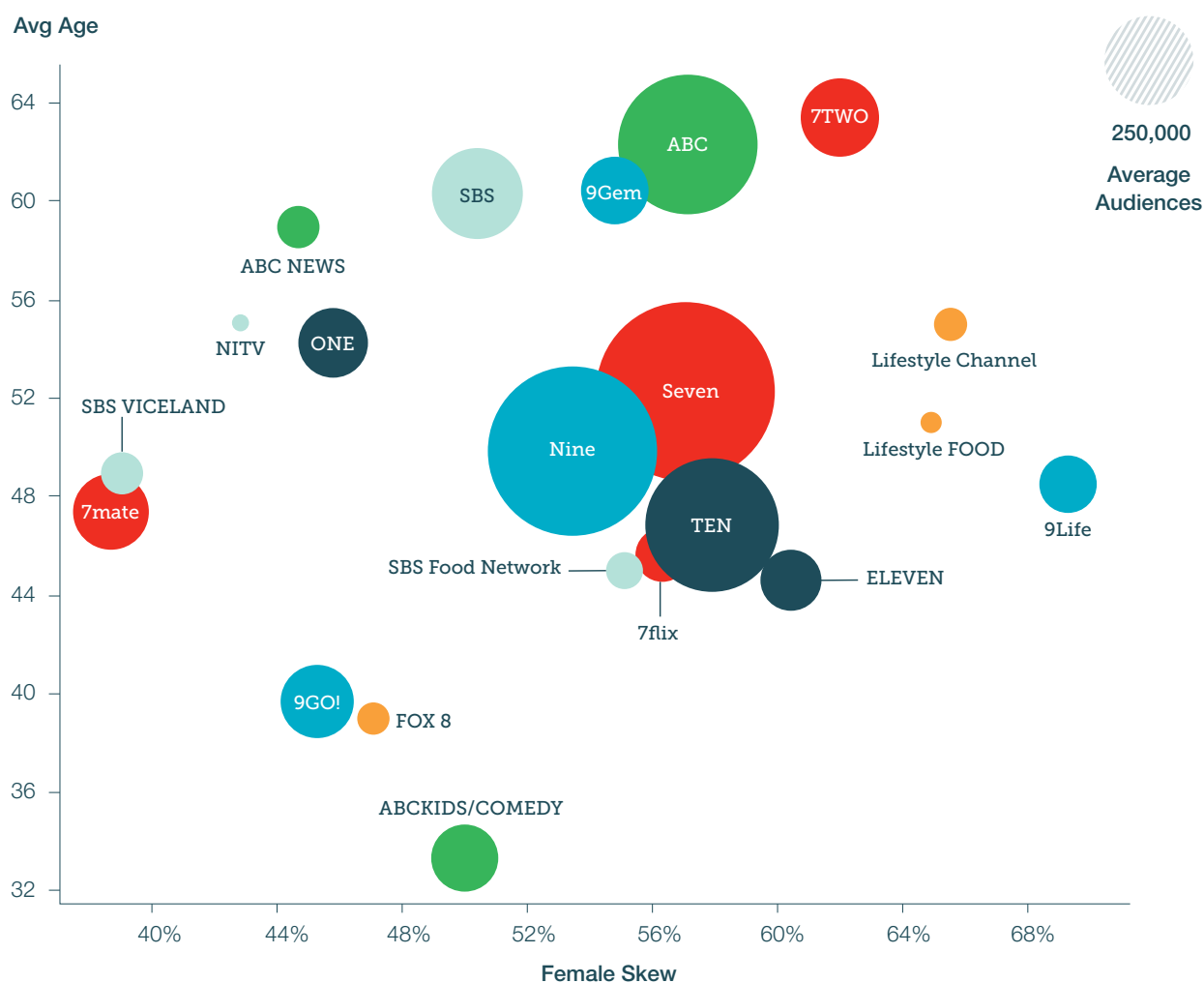
SBS management consults both the ABC and community broadcasting representatives to discuss content and services provided, to ensure that this obligation is discharged appropriately.

The SBS suite of services is delivered in the public interest, but there is little commercial incentive in providing many of these services. That the Government directs funding to SBS to ensure media diversity and availability is indicative of the detrimental outcome that could result for audiences if the free market was relied upon to provide a comprehensive range of culturally and linguistically diverse programs. These requirements also represent key competitive limitations to SBS in delivering its organisational strategies and obligations.

As evidenced by the figure on page 10, the SBS main channel, SBS VICELAND, NITV and Food Network occupy largely unique positions in the age and gender demographics of free-to-air television in Australia as depicted in the figure below. There is little overlap between SBS services and other television offerings in the market and little overlap with ABC services (in line with the requirements at paragraph 6(2)(g) of the SBS Act). The biggest overlap between all free-to-air television offers is between the primary channels operated by the Nine Network, Seven Network and Network Ten.

# Executive Summary (cont)

SBS Channel Portfolio demographics, 2017-18, April year-to-date<sup>7</sup>



The distinctiveness of SBS's portfolio of television services compared to other media operators is continuously reviewed and monitored by a committee of SBS Executives.

SBS has in place robust check-points to ensure content decisions are evaluated with reference to their market distinctiveness. This includes setting targets for culturally and linguistically diverse programming, including languages other than English programs and services, and ensuring, where content is not culturally and linguistically diverse, that it performs the critical task of engaging more audiences with the SBS network to attract them to SBS news and current affairs, commissioned content and other culturally and linguistically diverse and in-language programs.

<sup>7</sup> OzTAM & RegTAM, FTA & STV Database, 1800 - 23:59, Consolidated 28, July 2017- April 2018, FTA: 5 City Metro / Combined Agg. Markets. STV: National STV, Total Individuals

Seventy-three per cent of content on **the SBS main channel** is culturally and linguistically diverse content.<sup>8</sup> Australian commissioned programs like *Sunshine*, which explored the hopes and challenges of Melbourne's South-Sudanese community, helped to turn-around community perceptions at a difficult time for the community.<sup>9</sup> Acclaimed documentary series *Struggle Street* positively influenced the number of Australians becoming involved in volunteering to address social and economic disadvantage.<sup>10</sup> *Filthy Rich and Homeless* prompted one in three people who watched the program to donate money to a charity or homeless person.<sup>11</sup> As Australia's most trusted media organisation, SBS broadcasts news and current affairs that reflect the integrity of SBS journalists and editorial processes which ensure it meets community expectations at a time where trust in commercial media is declining.<sup>12</sup>

Seventy-one per cent of SBS VICELAND content is culturally and linguistically diverse, and resonates with a younger demographic of Australian audiences.<sup>13</sup> SBS VICELAND features diverse global content with a distinct and irreverent tone that helps younger audiences understand the world around them and is tightly aligned with the SBS Charter. Programs like *State of Undress* explore the cultural impact of global fashion, and SBS's in-house youth news program *The Feed* contributes to audience sentiment that SBS VICELAND **"has a different type of programming, not run of the mill or duplicate like some of the other channels."**<sup>14</sup>

**NITV** continues to explore new frontiers for Aboriginal and Torres Strait Islander broadcasting. This includes a digital focus to news and current affairs which enables NITV to use digital platforms to leverage its unique connection to Indigenous communities to explore issues in depth. Extensive arrangements forged with remote content producers reflect NITV's commitment to diversity of storytelling within Indigenous communities. Children's animation series *Little J & Big Cuz*, which incorporated a partnership with educators, is just one example of where NITV is actively contributing to diversity of the sector, while enabling Aboriginal and Torres Strait Islander children to see themselves reflected on television for the first time in an Australian animated series. NITV is playing a critical role in enabling all Australians to connect with First Nations' stories and people.

On **Food Network**, which is fully-funded by its own modest revenues, SBS's focus is on providing Australians with global food programming, and engaging more Australians with SBS. Food Network allows Australians to explore cultures through different cuisines from around the world and speaks to the inclusive ability of food to bring diverse communities closer together. The channel is successfully attracting new audiences with its distinctive global food programs, with those audiences going on to engage in culturally and linguistically diverse content across the SBS network. As at March 2018, there is a 30 per cent overlap in Food Network and SBS main channel audiences as a result of cross-promotion, demonstrating that Food Network is delivering on one of its objectives to cross-promote culturally and linguistically diverse and language other than English content on the SBS main channel, SBS VICELAND and SBS online platforms to more Australians.

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8 SBS internal analysis for culturally and linguistically diverse and language other than English programs, FY2017-18 April year-to-date

9 The Exchange, *Sunshine*, 31/10/17 till 12/11/17; Base: Respondents who watched *Sunshine*; n=256.

10 The Exchange, *Struggle Street S2*, 12/12/17 till 21/12/17; Base: Respondents who watched *Struggle Street S2* n=439. TV Source: OzTAM & RegTAM Regional FTA Database; 5 City Metro + Combined Aggregated Regional Markets including WA; SBS and SBS VICELAND; Tue, Wed, Thu 28/11/2017-07/12/2017; 20:30-21:30; TTL Individuals; *Struggle Street S2*; Reach (55+ mins cons); Consolidated 28 (Live + As Live + TSV 1-28 Days)

11 The Exchange, *Filthy Rich And Homeless – Follow-up Study*, 25/08/17 till 28/08/17; Base: Respondents who watched the series and completed the initial *Filthy Rich & Homeless* questionnaire; Unweighted base n=175.

12 The Pulse Survey, Pollinate, March 2018, n~1000 Australians aged 14-64 (n=1,060).

13 SBS internal analysis for culturally and linguistically diverse and language other than English content, FY 2017-18 April year-to-date

14 Clarity Strategic Research, *SBS Brandtracker, Wave 12, March/April 2018*.

# Executive Summary (cont)

On **SBS Radio**, the provision of 68 in-language programs across three radio networks, podcasts and online which focus on national Australian news and information, reflects the critical role SBS plays in aiding migrants to participate in Australian life. Each month on average over 1.8 million<sup>15</sup> Australians download SBS in-language podcasts which speaks to the growing demand for digital in-language services. SBS radio and audio services ensure Australians can access a suite of programs via this delivery method. Working alongside its community stakeholders, SBS Radio is one of the key services where the SBS Charter has **“guided and shaped SBS into a broadcaster that is loved, supported and cherished by Australians of non-English speaking and culturally diverse backgrounds, and the broader Australian audience.”**<sup>16</sup> SBS radio is distinct from community broadcasting services in that it focuses on national news and issues for audiences, whereas community radio services tend to be more localised in their content.

In summary, the lack of culturally and linguistic content from other providers across traditional and digital platforms reaffirms that SBS is meeting an audience need for media diversity, **with 91 per cent of SBS audiences agreeing that SBS helps them find content they’d never find anywhere else.**<sup>17</sup>

## Issues Paper Question 6

Noting that this Charter provision applies specifically to television and radio, is this requirement considered in relation to SBS On Demand?

***SBS On Demand is a distinctive market proposition catering to emerging media consumption methods amongst SBS’s diverse audiences. SBS actively considers and sets targets to ensure the contribution of SBS On Demand to overall media diversity.***

Digital services were mandated under the SBS Charter in 2013. The principal function of SBS in providing digital media services in accordance with its Charter is consistent with that of SBS broadcasting services. As a result, the same extensive considerations are applied to ensure distinctiveness of content for SBS On Demand. SBS is proud that SBS On Demand is engaging Australians with culturally and linguistically diverse and language other than English content as a result of this distinctive focus.

As a niche operator, a focus on digital innovation has been critical to the sustainability and relevancy of SBS. Because of its governing frameworks, SBS is unable to freely take on funds to invest in commercial businesses. Prioritising investment in digital services (such as SBS On Demand and SBS digital radio) was therefore a strategy given the utmost careful consideration, given SBS’s small content budgets.

SBS has not received any additional funding from government to invest in digital services; it has needed to look to its advertising revenues to assist in new digital activities. The aim of these digital services is to deliver on the Charter to as many Australians as possible, as audiences move to consume content in different ways. SBS’s strategy of adopting an advertising-funded platform for its on-demand service could have been adopted by any commercial operator.

15 Average monthly total podcast downloads, July 2016 - July 2017 - Feedburner analytics.

16 Federation of Ethnic Communities’ Council of Australia (FECCA), Submission to the Inquiry into the Competitive Neutrality of the National Broadcasters, 4 June, 2018, <http://fecca.org.au/wp-content/uploads/2018/06/FECCA-Submission-to-the-Inquiry-into-the-Competitive-Neutrality-of-the-National-Broadcasters.pdf>

17 The Exchange audience panel May 2017. Base: All respondents. N=595. The dataset has been weighted to be representative of SBS viewers (2017; OzTAM and RegTAM 18:00-24:00), based age and gender demographic profiling.

SBS's digital services maintain relevance to Australian audiences and this has served the public interest for media diversity on emerging platforms, and via increasingly preferred consumption methods. A new short-form content initiative launched by SBS this month in partnership with six state-based Australian screen agencies to provide more opportunities for Australian creatives from diverse and underrepresented groups is just one example of how SBS is utilising digital technologies to enhance delivery of the SBS Charter.<sup>18</sup>

## 75 per cent of international dramas on SBS On Demand are in language other than English.

SBS takes account of the absence of diversity of content available via other domestic streaming providers by focusing its streaming services on culturally and linguistically diverse and language other than English content. Accordingly, SBS sets high targets for culturally and linguistically diverse content on its SBS On Demand streaming service and achieves an average of 71 per cent culturally and linguistically diverse programming across all titles.<sup>19</sup> In relation to drama, which tends to be more attractive to audiences as a genre (in contrast to genres such as documentaries), this commitment goes beyond culturally and linguistically diverse. Seventy five per cent of international drama on SBS On Demand is in a language other than English, meeting SBS's target for drama on the platform. The remaining drama that is in English is an essential part of SBS's content offering to bring to Australian audiences quality drama series' that speak to the SBS purpose and to engage more Australians with the broader network offering.

For example, of those audiences who watched dystopian drama *The Handmaid's Tale* (series 1 or 2) on SBS On Demand, 24.4 per cent went on to watch a language other than English drama, an SBS commissioned Australian series or an SBS current affairs program.<sup>20</sup> This demonstrates that when SBS occasionally secures programs that develop popular appeal or a cult following, the larger public interest benefit served is that those audiences are exposed to other SBS programs. **That one in four audience members of *The Handmaid's Tale* stayed to use SBS On Demand to watch a culturally or linguistically diverse or language other than English program is clearly in the public interest, because there is a direct nexus to SBS's principal function as set out in its Charter.**

### Issues Paper Question 7

Noting that unlike the ABC, the SBS does not have a requirement to take account of the "broadcasting services provided by the commercial broadcasters" and that the SBS has the ability to seek advertising to partially fund its activities, how does the SBS approach the broad issues of competitive neutrality in relation to commercial players?

***SBS's small market size and structural disadvantages arising from legislated limits on advertising constrain its ability to compete for advertising revenues. This therefore limits SBS from materially influencing the advertising market.***

18 <https://www.sbs.com.au/aboutus/news-media-releases/view/id/2571/h/SBS-and-screen-agencies-launch-new-short-form-content-initiative-for-diverse-communities>

19 SBS internal analysis for culturally and linguistically diverse in-licence titles, April 2018

20 LOTE drama titles include *Bad Banks*, *Berlin Station*, *The Bridge*, *Midnight Sun*, *Dicte*, *Trapped*; SBS Commissioned drama titles include *Sunshine*, *Deep Water*, *Safe Harbour* and *The Principal*; SBS commissioned factual titles include *First Contact*, *Struggle Street*, *Filthy Rich and Homeless*, *Look Me in the Eye*, *Testing Teachers*; Any SBS Production includes all SBS Commissioned factual titles, SBS Commissioned drama plus SBS and NITV News and Current Affairs (SBS World News, *Insight*, *Dateline*, *The Feed*, *Small Business Secrets*, NITV News, *The Point* and *Living Black*). SBS analysis of internal data. Data is for viewing from July 5, 2017 to May 10, 2018.



# Executive Summary (cont)

SBS is the smallest operator in the free-to-air media sector. It has the smallest overall budget, lowest average market share, attracts the smallest share of revenues and operates with a fraction of the content and marketing budgets of its commercial free-to-air counterparts and the ABC. There are legislative restrictions that limit the amount of advertising inventory to less than half that of the commercial free-to-air broadcasters.

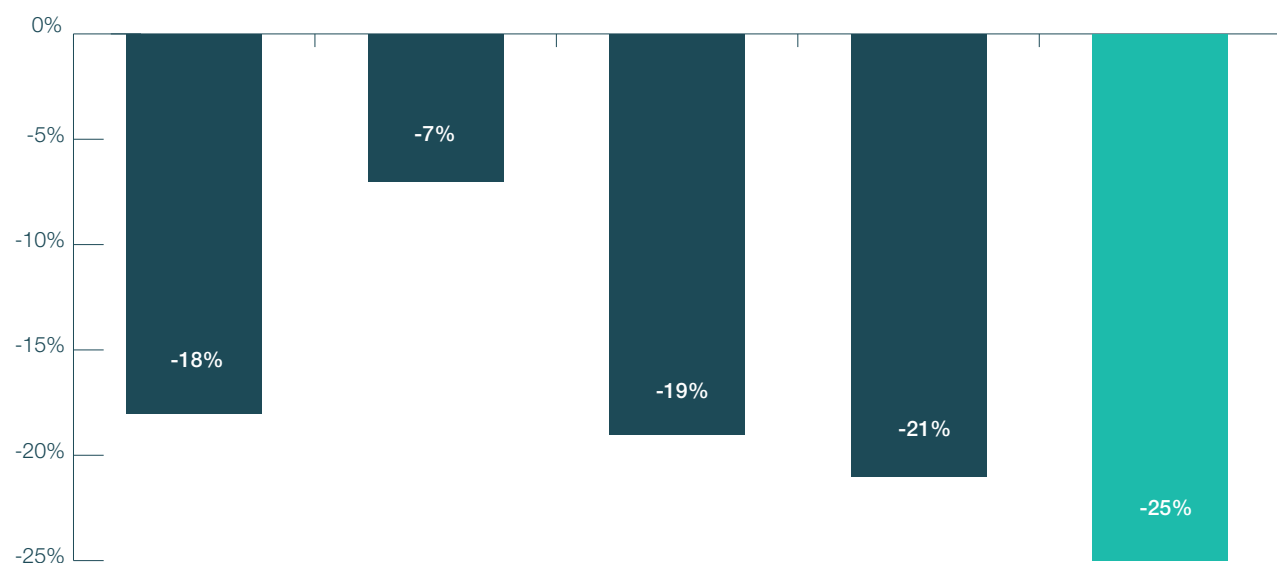
Over \$37.5 million in funding cuts have been applied to SBS since 2015, in a highly competitive environment for media operators, while commercial free-to-air operators have received benefits such as reductions in licence fees. Furthermore, as the Issues Paper for this Inquiry observes, all Australian media players are being impacted by the presence of large global players such as Google, Facebook, Amazon and Apple. As Deloitte Access Economics notes:

- *Against this broader market context, SBS remains the smallest player in the FTA television market with a current prime time market share of 7.3%. Its market share is higher among older audiences but lower among younger audiences including the 25-54 age group of most interest to advertisers.<sup>21</sup>*

Further, it adds that:

- *As a result of current advertising restrictions and differences in audience demographics, SBS currently has the smallest share of the declining FTA television advertising market (approximately 2%) and a much smaller share of the broader FTA television and online advertising market.<sup>22</sup>*

## Decline in 25-54 Average Audience (Metro) of Primary Channel for each network since FY2016<sup>23</sup>



	Ch 7	Ch 9	Ch 10	ABC	SBS
<b>FY16</b>	334,000	325,000	273,000	120,000	64,000
<b>FY18YTD</b>	273,000	303,000	221,000	95,000	48,000

<sup>21</sup> SBS: Report into aspects of Competitive Neutrality, Deloitte Access Economics, June, 2018, Appendix 1.1, pg13.

<sup>22</sup> SBS: Report on aspects of Competitive Neutrality, Deloitte Access Economics, June, 2018, Appendix 1.1, pg13.

<sup>23</sup> OzTAM FTA Database, ABC + Seven + Nine + TEN + SBS, 1800-2229, Average Audiences, 01/07/2015-06/06/2018, People 25-54, Consolidated 28 until 27/12/2015-09/05/2018, Consolidated 7 01/07/2015-26/12/2015 + 10/05/2018-30/05/2018, Overnight 31/05/2018-06/06/2018.



Whilst SBS audience declines in recent years are broadly aligned with the experience of the market as a whole, the SBS primary channel has experienced the most significant declines in the key 25-54 demographic over the past two years. This demographic is the most valuable to advertisers and consequently drives both the price and desirability of advertising slots – making it more difficult for SBS to generate advertising revenue. This decline reflects increased competitive pressures on SBS, the niche proposition of its services and constraints on its advertising inventory; it is a key outcome of SBS’s competitive limitation.

It is illogical therefore to consider that SBS could have capacity to materially influence market trends or be considered a competitive risk, particularly in the face of global entrants in the media landscape. The reality is that SBS’s small size not only strongly limits its ability to cause detriment to competition, it actually significantly constrains SBS’s competitive capacity.

**Further to this, SBS has an annual television content budget of \$62 million<sup>24</sup>** to invest in commissioned content and acquisitions to fill four free-to-air television channels and purchase titles for its streaming service. In contrast, the commercial free-to-air sector has a combined content budget of \$1.1 billion.<sup>25</sup> If that budget is averaged across the three commercial free-to-air networks, it is approximately \$350 million per network. Therefore, the average content budget of an Australian commercial free-to-air operator is six times as large as that of SBS.

To put this into further context, Nine Network will spend as much on two weeks of the Australian Open tennis in January 2020 as SBS will spend in the entire year to secure content for all of its four free-to-air channels and SBS On Demand.<sup>26</sup>

In addition to the commercial free-to-air sector, Foxtel reportedly invests more than \$100 million a year out of its total content investment of \$1.6 billion on local productions.<sup>27</sup> While precise estimates vary, it is also clear that other competitors in the sector, such as Stan and Netflix have substantially larger content budgets than SBS (for example, Netflix, invests between \$7.5 billion and \$8 billion).<sup>28</sup>

SBS is also constrained by the nature of the content it provides to deliver on its Charter. Unlike the commercial sector, SBS does not have access to long-running reality television franchises which can be principally funded by advertising sponsorships (these are restricted on SBS by its strict Codes of Practice and Editorial Guidelines). This is another key competitive limitation. A lack of capacity to create a consistent offering based on these established reality formats (such as *The Block*, or *My Kitchen Rules*) means SBS cannot develop the long-term audience commitment to such formats, and as such constrains its ratings performance.

24 SBS content budget FY2017-18, commissions and acquisitions, excludes news and current affairs and sports.

25 Excludes news and sport. This figure is a conservative estimated based on ACMA Broadcasting Financial Result reports (<https://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcasting-financial-results-report>), Senate Standing Committee on Environment and Communications, Answers to Senate Estimates Questions on Notice Budget Estimates May 2017. By way of comparison, Free TV asserts that its members spend \$1.5 billion per year on Australian content alone, <https://www.communications.gov.au/sites/g/files/net301/f/submissions/freetv-australia.pdf>.

26 <https://www.tennis.com.au/news/2018/03/29/tennis-australia-signs-landmark-rights-deal-with-nine-network>

27 <https://www.if.com.au/foxtel-takes-the-fight-up-to-netflix-and-stan/>

28 <https://au.finance.yahoo.com/news/netflix-apos-8-billion-content-220500427.html>

# Executive Summary (cont)

SBS's comparative focus on short-run documentaries and factual content which aligns with its Charter responsibilities, shortage of budgets for long-running Australian content and commitment to distinctiveness means that it must purchase programs from over 500 disparate distributors across the world. Buying many pieces of content from global distributors to deliver on the Charter also increases the cost of doing business. In contrast, competitors acquiring content for the Australian market will generally only negotiate with a handful of distributors and will therefore have bigger buying power.

In this context, it is not credible to suggest that SBS has advantageous purchasing power for international content in comparison to its commercial counterparts.

Having said this, it is also impossible for SBS to acquit its obligations without occasionally broadcasting some programs which may also be of appeal to other broadcasters or content providers. SBS is not legislatively limited to a schedule of programs which no other media provider wants to broadcast. If this were the case, SBS would be a market-failure operator – which would not be in the public interest. This was not the Parliament's intention when SBS was created.

**Question 8:** Considering the commercial activities of the national broadcasters (e.g. where they are selling or purchasing goods and services), is there evidence that they have taken undue advantage of their government ownership, to the detriment of competitive outcomes?

***SBS commissioned Deloitte Access Economics to assess the application of competitive neutrality principles to SBS activities.***

As Deloitte Access Economics notes:<sup>29</sup>

- *In order to demonstrate that competitive neutrality principles have been breached, it would be necessary to show that:*
  - *SBS faces competition in an activity*
  - *SBS has a net advantage in providing a service as a result of its government ownership*
  - *Public interest considerations do not outweigh any detriment to competitive neutrality*
  - *It is important that competitive neutrality be considered in the context of how SBS achieve their objectives through a suite of content and platforms. The approach should recognise the interdependencies between content and platforms and audience pathways, rather than focusing on a narrow assessment of individual programs on single platforms.*

<sup>29</sup> SBS: Report on aspects of Competitive Neutrality, Deloitte Access Economics, June, 2018. Appendix 1.1, pg22.

Deloitte Access Economics also notes:<sup>30</sup>

- *While SBS's Charter requires it to contribute to the diversity of Australian television services, there are no competitive neutrality requirements for SBS to balance 'competing' in the market and 'complementing' the market.*
- *Any examination of competitive neutrality should also consider whether there has been a material detriment to competitive outcomes. SBS has a very small share of viewership and advertising revenue, and its ability to influence competitive outcomes is commensurately small given its size.*

Following assessment against its framework for competitive neutrality Deloitte Access Economics has formed the following views in relation to SBS key services:

### **SBS main channel**

The SBS main channel, as per the SBS Charter, provides public interest benefits by broadcasting a large proportion of culturally and linguistically diverse (CALD) material as well as content of broader appeal. At the same time, its relatively small market share means that any impact on competition is likely to be low. On balance, based on our analysis of information available, any impact on competition is likely to be outweighed by public interest benefits. As such, SBS main channel as a whole is unlikely to be breaching competitive neutrality principles.

### **SBS VICELAND**

SBS VICELAND is forecast to cover its avoidable costs in 2017-18 (it has not done so in the past two years, largely due to costs associated with A-league coverage). Further, SBS VICELAND's market share is smaller than that of the SBS main channel, at 1.2% of prime-time audienceship, and only slightly higher among the desirable 25-54 market at 1.5%, and hence its impact competition in the market place is likely to be small. There is a strong case that it is complying with competitive neutrality principles.

### **NITV**

NITV largely serves SBS's public interest objectives and attracts a very small audience share of 0.2% to 0.3% in most metropolitan and regional markets. As a result, it is unlikely to create competitive neutrality concerns.

### **Food Network**

As with SBS VICELAND, there is a strong case that the Food Network is complying with competitive neutrality principles, noting that it provides a financial return to SBS.

### **SBS On Demand**

SBS On Demand, like the SBS main channel provides public interest benefits by broadcasting a large proportion of CALD material as well as content of broader appeal and in so doing helps fulfill SBS's charter requirement to provide digital media services to the public. SBS On Demand is also projected to recover its incremental costs in 2017-18 indicating that it currently operates largely independently of government funding. On balance, based on our analysis of information available, any adverse impact of SBS on Demand on competition in the market is likely to be outweighed by public interest benefits. As such, SBS On Demand as a whole is unlikely to be breaching competitive neutrality principles.<sup>31</sup>

<sup>30</sup> *ibid.*

<sup>31</sup> Appendix 1.1, pg10.

# Executive Summary (cont)

Deloitte Access Economics also notes:

*The only competitive neutrality complaint dealt with to date by the Productivity Commission relating to the public broadcasters was an investigation into the ABC's production facilities.<sup>32</sup> A private television production company made a complaint that because the production facilities were jointly used by government and private clients, they were priced so low that private competitors could not compete. The Productivity Commission concluded that government businesses will be compliant with competitive neutrality principles "if its prices for commercial output exceed the avoidable cost of supplying the service", noting that "the avoidable cost comprises all the costs which the agency would avoid if the service was not provided." We have had regard to this finding in our analysis.<sup>33</sup>*

*In the UK the Charter Review considered a range of similar issues in relation to the BBC. There are, however, important differences to note between the BBC and SBS's commercial operations.*

- Unlike SBS, the BBC cannot engage in commercial activity directly but only through subsidiary companies, and not using government revenue.*
- The funding model under which the BBC operates is different to that of SBS. Rather than being funded through general government revenue or commercial advertising, television owners in the United Kingdom pay a "TV licence" fee which funds the BBC.*
- The BBC is the largest and most influential player in the UK media market, with 33 per cent of the television audience and 53 per cent of the radio audience. By comparison, SBS has a much less significant role in Australia's media sector.<sup>34</sup>*

32 Commonwealth Competitive Neutrality Complaints Office (2000). *Investigation No. 4: ABC Production Facilities*.  
Online: <http://www.pc.gov.au/inquiries/completed/abc-production/report4.pdf>

33 Ibid., p. 4

34 SBS: Report on aspects of Competitive Neutrality, Deloitte Access Economics, June, 2018. Appendix 1.1, pg25.

## SBS Summary

Whilst SBS is constructively participating in the Inquiry process, SBS is of the view that there is no evidence of a problem that needs addressing. No complaint about SBS on issues of competitive neutrality has been made to the Competitive Neutrality Complaints Office, which is the Government body specifically tasked with addressing such concerns. Competitive neutrality was not raised during the extensive ABC and SBS Efficiency Study led by Peter Lewis in 2014, which found SBS to be a lean and efficient organisation, with established prudent business practices to extract value from its investments in favour of the Australian community.<sup>35</sup> Indeed, the Efficiency Study and subsequent government policy sought to actually expand SBS's commercial capacity, rather than restrict it. This is somewhat at odds with the idea that SBS could be unfairly competing in the domestic media market.

This submission demonstrates that the robust strategies, policies and procedures SBS has in place to deliver on the requirements of the SBS Charter have served the organisation and the Australian community well.

In particular:

- There is evidence to demonstrate that SBS is providing necessary and distinctive multiplatform media services that would not be provided by another media provider if it were not for SBS.
- There is evidence to demonstrate that SBS's extensive competitive limitations across its market dynamics prevent it from undercutting the advertising market or driving up costs for content, given its minuscule size and content budgets.
- There is evidence to demonstrate that, where SBS embarks on new activities in competitive markets, the marginal cost is being covered by marginal revenue, thereby avoiding potential advantage flowing from SBS's government ownership.
- There is extensive evidence which shows the social value of SBS to Australia and the public interest objectives served by the provision of SBS programs and services.
- There is no evidence to indicate that SBS is not operating consistent with competitive neutrality principles.

As the Terms of Reference for the Inquiry note - competitive neutrality principles do not imply that government businesses cannot be successful in competition with private businesses. The analysis and information provided in this submission clearly demonstrates that when SBS does compete, it does so from a constrained position, rather than an unfairly strong position as a result of its government funding.

The views and opinions of SBS's audiences, stakeholders and the Australian community more broadly speak to the public value of SBS. Community feedback and engagement shows that SBS is delivering successfully on its Charter requirements and meeting the community's need for media diversity – especially those communities that SBS was principally established to serve.

SBS is confident that it is aligned with competitive neutrality principles, noting in particular the analysis and framework developed by Deloitte Access Economics for the purposes of this Inquiry.

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35 *ibid.*

# 2 Overview of SBS

## 2.1 SBS in the global and national context

### Public interest broadcasting

SBS's role in delivering public interest journalism and independent, non-partisan public broadcasting has significant public benefits, particularly in a highly concentrated media landscape.

SBS provides a holistic suite of multiplatform programs and services that enhance and enrich the Australian community through a more informed society. SBS's unique connections and experience with multicultural and Aboriginal and Torres Strait Islander communities enable it to cover news and tell the stories of those communities with respect and dignity. In particular, the news, current affairs and information services provided by SBS inform and promote understanding among all Australians and maximise opportunities for people from diverse backgrounds to engage in social, political and cultural discourse.

SBS has long-held a well-earned reputation for quality news and analysis on global events and stories and issues from across multicultural Australia. SBS News and Current Affairs has correspondents based in the United Kingdom (UK) and China, which ensures direct access to the most important stories from many migrants' home countries, as well as access to news contacts in many countries through staff working on 68 language programs.

SBS is well-regarded for playing a vital role by providing credible, trustworthy, inclusive, balanced and independent services which meet the communication needs of Australia's multicultural community.

It is noteworthy that even as far back as the early 1930s, as legislation was being introduced to establish the Australian Broadcast Commission (as the Australian Broadcasting Corporation was then known), there was opposition from the commercial sector which sought to restrict the ABC from collecting its own news, arguing it would compete with commercial print and radio. Today, at a time of declining trust in media, the most trusted sources of news for the Australian public are public broadcasting news services. This highlights that it would be detrimental to Australian society if policy makers sought to rely too heavily on the views and recommendations from commercial media interests that the remit of SBS and public broadcasting more generally be limited to market failure programming.<sup>36</sup>

Addressing the United Nations summit on refugees and migration in 2016, the Prime Minister Malcolm Turnbull said of Australia's cultural diversity:

*"Australians are enriched by the cultural diversity of our community – we regard our people as our greatest assets and our unity in diversity, one of our greatest strengths.*

*"This is not a recent development. As just one example there is SBS, founded nearly forty years ago the public broadcaster, not only broadcasts in dozens of languages but interpreting and celebrating our multicultural society and the values of mutual respect to the whole society."*

*The Hon Malcolm Turnbull MP, Prime Minister of Australia, Address to the United Nations General Assembly, September 20, 2016<sup>37</sup>*

36 <http://www.abc.net.au/radionational/programs/backgroundbriefing/who-owns-the-news/3061842> \ "transcript"  
<http://www.abc.net.au/radionational/programs/backgroundbriefing/who-owns-the-news/3061842#transcript>

37 <https://www.malcolmturnbull.com.au/media/speech-to-the-united-nations-general-assembly>

SBS is also the most trusted media organisation, polling well above commercial networks. Trust in SBS is strongest at a time when trust in media overall is declining, with only about a third of Australians agreeing that they trust free-to-air commercial television networks.<sup>38</sup>

**Overwhelmingly, Australians consider SBS the network that best reflects a diversity of views and voices, is balanced and impartial and helps Australia to be an inclusive multicultural nation.<sup>39</sup>**

The Australian community's confidence in SBS indicates the public interest in maintaining a strong and supported multicultural broadcaster, particularly at a time when the commercial sector is seeking to quarantine SBS's role to a market-failure broadcaster of only narrow programming.

### **Hybrid-funding is commonplace globally**

Whilst the SBS hybrid-funding model is unique in Australia, hybrid-funding for public broadcasters is commonplace around the world. The funding mix may include public funds, licence fees, commercial income and advertising and is a globally-proven successful model in the delivery of media which meets the public interest for independent and diverse media. These broadcasters compete against commercial operators for audiences, content and revenues.

### ***Public broadcasting in Europe***

In December 2015, the EBU published *Funding of Public Service Media (PSM)*,<sup>40</sup> which found that over 80 per cent of the European public broadcasters surveyed, received some income from advertising. This report noted that in four European countries, more than 40 per cent of total PSM income came from commercial revenue: Austria (42.8 per cent), Ireland (41.6 per cent), Poland (64.4 per cent) and Malta (68.9 per cent). The report also noted that "...in several cases the relative proportion of commercial revenues has mechanically increased over the past few years with the sudden drops in public funding in absolute terms, without PSM actually being more present on advertising or other commercial markets."

Further, a recent survey showed that trust in public news media is higher than trust in private media in eight western European countries and in seven countries, a public media organisation holds the position of most trusted media source.<sup>41</sup>

38 The Pulse Survey, Pollinate, March 2018, n~1000 Australians aged 14-64 (n=1,060)

39 The Pulse Survey, Pollinate, March 2018, n~1000 Australians aged 14-64 (n=1,060)

40 <https://www.ebu.ch/contents/news/2017/12/funding-of-public-service-media-2-new-reports.html>

41 Pew Research Centre, Survey of eight Western European countries, conducted October 30-December 20, 2017.



## 2 Overview of SBS (cont)

### *Public broadcasting in Canada*

Hybrid-funding is not unique to Europe. In May 2018, CBC/Radio-Canada announced that in the first quarter, its advertising revenues had grown by eight per cent, and a 13 per cent revenue gain overall. In its 2017 Annual Report, CBC/Radio-Canada reported a 34 per cent increase in self-generated revenue. In this, CBC/Radio-Canada noted that:

“Higher event revenue this year from advertising due to our broadcast of the Rio 2016 Olympic Games...[and] revenue from our ongoing activities decreased due to:

- Lower conventional TV advertising revenue as the Canadian TV advertising market continues to soften; and
- Decline in our subscriber fees consistent with the industry which is being adversely affected by the cord-shaving and cord-cutting trends.

These decreases were partly offset by growth in our digital revenue, which continues to benefit from our shift towards digital programming and higher digital audiences.”<sup>42</sup>

### *Public broadcasting in the United States*

Public media in the United States (US) is a system of independently owned and operated local public radio and television stations. The Corporation for Public Broadcasting (CPB) in the US delivers federal support to these individual stations, and to ‘... shield stations from political influence...’ The Public Broadcasting Act of 1967 (47 U.S.C. § 396) sets out a formula by which the CPB is required to distribute its appropriation. The CPB notes that 95 per cent of its appropriation goes directly to ‘content development, community services, and other local station and system needs.’ The total annual appropriation to CPB is approximately \$450 million.

### *Public Broadcasting in the United Kingdom*

Like Australia, the UK has two public broadcasters, the British Broadcasting Corporation (BBC) and Channel 4.

#### British Broadcasting Corporation (BBC)

Comparisons are often made between the BBC and Australia’s national broadcasters. Like Australian public broadcasters, the independence of the BBC is defined in its Charter. It states that ‘the BBC must be independent in all matters concerning the fulfilment of its mission and the promotion of the public purposes, particularly as regards editorial and creative decisions, the times and manner in which its output and services are supplied, and in the management of its affairs’.

However, the scale and structure of the organisations is very different to SBS. The BBC’s operating budget is approximately £4.95 billion<sup>43</sup> and is funded by television licence fees paid by the public. It has about a 33 per cent audience share (six times greater than SBS) and is watched by over 95 per cent of the UK population each week (in contrast to SBS’s small audience share).<sup>44</sup>

#### Channel 4

The UK’s Channel 4 has a public service remit established by Parliament and overseen by Ofcom. It is entirely self-funded by its commercial activities. SBS’s purpose aligns closely with the Channel 4 purpose to provide an alternative media offering which challenges the status-quo via the provision of diverse content.

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42 [http://www.cbc.radio-canada.ca/site/annual-reports/2016-2017/\\_documents/2016-2017-annual-report-cbc-radio-canada.pdf#page=61](http://www.cbc.radio-canada.ca/site/annual-reports/2016-2017/_documents/2016-2017-annual-report-cbc-radio-canada.pdf#page=61) (page 3)

43 <http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/reports/pdf/bbc-annualreport-201617.pdf>

44 <http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/reports/pdf/bbc-annualreport-201617.pdf>



## Social and demographic influences

For the 12 months ending 30 September 2017, Australia's population increased by 395,600 people with 63.2 per cent of this increase attributable to net overseas migration.<sup>45</sup> The cultural and linguistic diversity of Australia's resident population has been reshaped over many years by migration. While historically Europeans made up the majority of immigration, today there is significant increasing migration from Asia, particularly China, India and the Philippines<sup>46</sup> as well as Africa. In 2016, 21 per cent of Australians spoke a language other than English (LOTE) at home.<sup>47</sup>

A significant proportion of Australians are second generation migrants as a result of the enduring success of Australia's immigration policies. In the 2016 Census, 49 per cent of the population identified as either being born overseas or having at least one parent being born overseas.<sup>48</sup> Despite the increasing proportion of the population coming from culturally and linguistically diverse (CALD) backgrounds, including those who are second or third-generation migrants, these communities and their voices remain largely underrepresented in today's media.<sup>49</sup>

Since 2007, the Scanlon Foundation has released the *Mapping Social Cohesion* report, which measures Australia's progress against key social cohesion indicators.

The 2017 survey showed:

- 92 per cent of respondents indicated that they have a 'sense of belonging in Australia';
- 85 per cent of respondents indicated that multiculturalism has been good for Australia; and
- 60 per cent of respondents also agreed that Australia should do more to learn about the customs and heritage of different ethnic and cultural groups in this country.<sup>50</sup>

However, social cohesion cannot be taken for granted:

- 20 per cent of respondents indicated that they had experienced discrimination in Australia in the past 12 months because of their skin colour, ethnic origin or religion; and
- the social cohesion index registered marginal downward movement and there were lower scores in four of the five domains of social cohesion: sense of belonging, sense of worth, social justice and equity and acceptance.

*"SBS has a distinctive and unique role in supporting Australia's CALD communities and in the promotion of a vibrant and harmonious multicultural Australia. The continued relevance and importance of SBS is demonstrated by the current social and political climate, noting the recent Scanlon Foundation report Mapping Social Cohesion which highlighted a rise in the proportion of people experiencing discrimination on the basis of skin colour, ethnicity or religion."*

Federation of Ethnic Communities Councils of Australia (FECCA), Budget priorities, 2017–18, January 2017

45 Australian Bureau of Statistics, Australian Demographic Statistics, cat. no.3101.0, viewed 2 May 2018, Retrieved from <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>

46 Australian Bureau of Statistics, Cultural Diversity in Australia, 2016, viewed 2 May 2018, Retrieved from <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Cultural%20Diversity%20Article~20>

47 Australian Bureau of Statistics, Cultural Diversity in Australia, 2016, viewed 2 May 2018, Retrieved from <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Cultural%20Diversity%20Article~20>

48 Australian Bureau of Statistics, Cultural Diversity in Australia, 2016, viewed 2 May 2018, Retrieved from <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Cultural%20Diversity%20Article~20>

49 Screen Australia, Seeing ourselves: Reflections on diversity in Australian TV drama, viewed 2 May 2018, Retrieved from <https://www.screenaustralia.gov.au/getmedia/157b05b4-255a-47b4-bd8b-9f715555fb44/TV-Drama-Diversity.pdf>

50 The Scanlon Foundation, Mapping Social Cohesion 2017, viewed 2 May 2018, Retrieved from [http://scanlonfoundation.org.au/wp-content/uploads/2014/05/ScanlonFoundation\\_MappingSocialCohesion\\_2017.pdf](http://scanlonfoundation.org.au/wp-content/uploads/2014/05/ScanlonFoundation_MappingSocialCohesion_2017.pdf)

## 2 Overview of SBS (cont)

### 2.2 The Special Broadcasting Service Act 1991

The SBS Charter sets out the principal functions of SBS and a number of duties it has to fulfil. The Charter, contained in Section 6 of the Special Broadcasting Service Act 1991 (the SBS Act), states:

- (1) The principal function of the SBS is to provide multilingual and multicultural radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.
- (2) SBS, in performing its principal function, must:
  - (a) contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities; and
  - (b) increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society; and
  - (c) promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people; and
  - (d) contribute to the retention and continuing development of language and other cultural skills; and
  - (e) as far as practicable, inform, educate and entertain Australians in their preferred languages; and
  - (f) make use of Australia's diverse creative resources; and
  - (g) to the extent to which the function relates to radio and television services— contribute to the overall diversity of Australian television and radio services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the community broadcasting sector; and
  - (h) to the extent to which the function relates to radio and television services— contribute to extending the range of Australian television and radio services, and reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.

#### The SBS Act:

- Explicitly requires SBS to provide media services for all Australians; not only multicultural and Indigenous communities (s6(1)).
- Specifies that SBS's role includes but is not limited to, increasing awareness and promoting understanding about the benefits of multicultural diversity (ss6(2)(b) and (c)).
- Since 2013, has prescribed that SBS extend delivery of the Charter to include digital media services (s6(1)).
- Permits SBS to compete within the domestic media sector in the interests of meeting the Australian community's interests in having access to diverse and distinctive media (ss6(1), 6(5), 44 and 45).
- Permits SBS to carry out advertising which inherently entails competition with other media providers for this revenue (ss45 and 45A).
- Permits SBS to carry on any business or other activity incidental to the fulfilment of the Charter ss6(5) and 10(i)).

## 2.3 SBS's operating principles

Issues Paper questions in consideration:

### Question 1

What awareness is there in your organisation of the requirement to undertake a “best endeavours” approach to complying with the Competitive Neutrality Policy? What organisational policies and processes are in place?

### Question 2

What approach is used by your organisation to consider issues of competitive neutrality when commencing new activities or entering new markets? Are there examples of how this has been applied?

### Question 13

From your perspective do the national broadcasters seek a balance between competing in the market and complementing the market? Is that balance the same for traditional broadcasting and for new digital platforms?

### Guiding principles for SBS organisational activities

<b>Public interest</b>	The SBS Charter underpins strategic objectives and business activities.
<b>Diversity</b>	SBS is purpose-led in its commitment to provide all Australians with a diversity of views and voices.
<b>Editorial independence and transparency</b>	The editorial independence and responsibility of SBS, and being transparent and accountable to Australians, is critical to maintaining community trust.
<b>Commercial activities</b>	As a result of its hybrid-funding operating model, SBS is able to engage in limited commercial activities and advertise within restricted legislative limits of five minutes of advertising per hour.
<b>Competition</b>	Under the SBS Act, SBS is permitted to engage in competition to aid overall fulfilment of the Charter.
<b>Efficiency</b>	Efficiency is at the organisation's core. Buying and making content is done in the most efficient and effective manner. New activities must be funded incrementally or by ceasing other activities.

## 2 Overview of SBS (cont)

All of SBS's decisions are evaluated with reference to the SBS Act and in particular:

- The SBS Charter as set out in section 6;
- The role of the SBS Board of Directors to ensure that SBS performs its functions in a proper, efficient and economical manner and with maximum benefit to the people of Australia as set out in section 9;
- The duties of the Board set out in section 10;
- The powers and duties of SBS set out in section 44; and
- Advertising powers set out in sections 45 and 45A.

SBS's commitment to the Charter has set the organisation's tone for more than 40 years and rigorous reference to the Charter guides SBS's decisions. This ensures SBS delivers services for the audiences it was established to service where there is a need and promotes the benefits of multicultural diversity through programs and services for all Australians.

The need for the SBS Board of Directors to ensure the integrity and independence of SBS, the need for SBS to link its activities to the Charter and the need for SBS to abide by broader regulatory and legislative constraints (including its restricted advertising powers) form the strategic and operational blueprint for the organisation.

In addition, systems and protocols that SBS has in place (for example, to comply with legislative obligations such as those required by the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act)) and its efficient operating model, mean that SBS participates in the relevant markets from a constrained position, rather than one that is unfairly bolstered by Government funding.

This is in addition to the general accountability mechanisms that apply to SBS, including to the Parliament via the tri-annual Senate Estimates processes, and to the communities that SBS serves.

In line with principles of competitive neutrality, the constraints arising from these requirements not only limit SBS's competitiveness, but safeguard against advantage resulting from government funding. Further, the extensive public interest benefits of SBS's fulfilment of its obligations under its Charter meet competitive neutrality principles.

The SBS Executive and senior management are alert to competitive neutrality principles and SBS has extensive organisational processes in place which deliver outcomes consistent with its Charter and Act. Whilst SBS is legislatively enabled to be competitive, Executives and senior managers understand their obligations to ensure activities are aligned to the Charter, in the public interest.

Whilst some of the SBS Charter obligations are complementary in nature (such as those set out in section 6(2)), the SBS Act also makes it clear that SBS is required to reach as broad an audience as possible. This is explicit in the requirement to: ***“inform, educate and entertain all Australians” and “increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society”***.

SBS Charter obligations, and the expectation that SBS will meet a share of its revenue via advertising, necessarily entail a degree of competition with other media providers. The balance that SBS strives to meet is that any competitive activity is central to the fulfilment of the SBS Charter. Specifically, it is impossible for SBS to acquit its obligations without broadcasting some programs which may from time to time also be of appeal to other broadcasters or content providers. The SBS Act is well-defined in providing permission to SBS to compete within the domestic media sector.

SBS is also not legislatively limited to a schedule of programs which no other media provider wants to broadcast. If this were the case, SBS would be a market-failure operator. The SBS Act is clear in empowering SBS to connect with all Australians.

**That 94 per cent of SBS's audiences believe SBS is good for Australia<sup>51</sup> reinforces the value of having a strong multicultural broadcaster adequately equipped to deliver on its responsibilities, which include connecting with mainstream Australia.**

As such, this means that SBS will inevitably be competing in the marketplace from time to time with other content providers (including the commercial free-to-air sector, subscription or streaming services) for programs they would like. Indeed, the terms of the Inquiry note that competitive neutrality principles do not imply that government businesses cannot be successful in competition with private businesses. However, those competitors can – and usually do – prevail over SBS when a program demonstrates value to them.

#### **Operating principles for new activities**

Similarly, the SBS Act guides all consideration of new activities. The SBS Board of Directors specifically considers any proposals in strict accordance with its duties under the SBS Act and with reference to the legislative obligations within it, specifically the SBS Charter. This approach has ensured the output of initiatives which deliver on SBS's intended responsibilities for more than four decades.

- SBS enters new activities when there is an opportunity to enhance and improve overall delivery of obligations under the SBS Charter; specifically around audience engagement on digital platforms, extending reach and fulfilment of local content aspirations. This maximises public interest outcomes, consistent with competitive neutrality principles;
- SBS only enters a new activity if it determines there is market demand for an accessible service within the Australian community and which also aligns with its objectives to maximise its delivery on the Charter. This minimises overlap with other services; noting that SBS is legislatively enabled to be competitive and that competitive neutrality principles do not prevent SBS from being competitive;
- In most cases where new activities which also present opportunities to increase own-source revenues, SBS will only enter into an activity where the marginal cost of doing so will be covered by incremental revenue increase arising from that activity. This helps to ensure that SBS is not relying on its government ownership in competitive markets (noting that many new SBS activities are not propositions that would attract commercial return in any event, for example the recently launched Rohingya digital language program); and
- New activities should also align with SBS's capacity to leverage its innovative and agile workforce to support the SBS Charter.

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<sup>51</sup> The Exchange audience panel May 2017. Base: All respondents. N=595. The dataset has been weighted to be representative of SBS viewers (2017; OzTAM and RegTAM 18:00-24:00), based age and gender demographic profiling.

## 2 Overview of SBS (cont)

All resource allocation of activities must be subject to:

- A full business case proposal considered by a committee of senior finance, project management and operations personnel, including testing veracity of financial data;
- Assessment via a dedicated monthly committee meeting of Executives charged with overseeing the organisation's content strategy to ensure it reflects responsibilities in the SBS Charter and delivers on strategic objectives aligned with SBS's focus on distinctiveness;
- Assessment and endorsement by the Senior Executive team and Chief Executive Officer; and
- In the case of significant investments or new strategic initiatives, these must be presented to the SBS Board of Directors for review and endorsement; and
- Ongoing periodic reporting on budget and key performance metrics to the Senior Executive.

### Case Study: SBS's approach to new initiatives, Food Network

SBS entered a commercial arrangement with Scripps Networks Interactive for the provision of global food content. This arrangement was reached in 2015 and enabled SBS to launch a new free-to-air channel on a low-cost model, providing Australians with access to diverse international food content in an environment where no such multi-channel was being provided by the free-to-air market.

Food Network allows Australians to explore cultures through different cuisines across the world and speaks to the inclusive ability of food to bring diverse communities closer together. Food Network also provides a channel on which SBS can repeat its significant portfolio of SBS food commissions (such as *Destination Flavour Japan*), thereby extending their life and value to audiences and taxpayers.

As evidence of the extensive consideration that SBS applies to ensure it makes sound strategic decisions on new initiatives with reference to the SBS Act, the proposed channel and its providers had to meet a number of identified criteria.

These criteria are consistent with the Deloitte Access Economics proposed framework for competitive neutrality insofar as they considered the competitive nature of the proposed channel, sought to ensure a cost-effective, cost-covering model for establishment and aimed to maximise public interest outcomes.

#### **Food Network Criteria:**

- **Charter** – Alignment to delivery of the SBS Charter as well as ensuring the partner organisation is aligned with SBS's purpose and values
- **Competitive context** – An unmet market need for global food programming and therefore an opportunity for SBS to provide this service in the free-to-air television market
- **Content portfolio** – Alignment with SBS's current focus areas and providing an opportunity to complement SBS's existing audience profile by attracting new, different audiences
- **Commercial attractiveness** – Capacity of arrangement to provide SBS with a self-funded model and opportunity to extract more revenues to aid local content investment, as well as the ability to share risk in the arrangement
- **Retention of editorial control by SBS** – In line with the need for SBS to protect its independence, the arrangement must afford full editorial control to SBS

The Food Network financial and operational business case was subject to extensive financial testing, risk identification and mitigation analysis. It was reviewed by a committee of Executives charged with overseeing cross-organisational content activities, then reviewed and endorsed by the SBS Executive, before finally being presented to the SBS Board of Directors for consideration and approval.

## SBS Corporate Plan

SBS outlines its organisational activities in the annual SBS Corporate Plan, as required under the PGPA Act and the SBS Act. It is prepared each year in accordance with the *Public Governance, Performance and Accountability Rule 2014*.

The SBS Corporate Plan for 2017–18 consists of five core areas which outline the organisation's focus on providing Australian audiences with distinctive programs and services across all channels and platforms, its mandate to invest in digital delivery of SBS programs and services, and the increasing importance of the digital offering to SBS's reach and relevance. It also speaks to SBS's long-embedded commitment to connecting with the communities it was established to service and to driving organisational activities through effective and efficient provision of services underpinned by a high-performing, cohesive employee base.

The strategic pillars were developed with reference to SBS Act and give primacy to the responsibilities of the SBS Charter. SBS's strict adherence to its responsibilities have stood the test of time for over four decades and evolved in accordance with the multicultural policy guiding Australia's ongoing social and economic development. Further, because of SBS's strategic focus, Australian audiences can access alternative media services not available elsewhere in the market.

1. **Distinctive content:** SBS's deeply-rooted focus on distinctiveness as its first strategic pillar reflects the primacy of SBS's commitment to providing Australian audiences with an alternative offering to other media providers, and means audiences have the opportunity to access different and diverse perspectives.
2. **Digital acceleration:** SBS continues to concentrate on building a distinctive network across both traditional and digital platforms to allow for a wide range of views and voices to be represented in mainstream media on rapidly evolving digital platforms. Audience access to content on digital platforms should not be confined to a homogenous commercial offering.
3. **Inspiring communities:** SBS provides unique news and programs that support migrant and Aboriginal and Torres Strait Islander communities and promote the benefits of diversity to all Australians, at a time when inspiring a greater understanding of the value of multiculturalism has never been more important given global and local tensions.
4. **Great Business:** SBS consistently pursues efficiencies to invest in content and develops innovative arrangements which aid output effectiveness.
5. **Great People, Great Culture:** A high-performance, engaged workforce is critical to SBS's success in a rapidly changing environment (See Appendix 1.2 for SBS's four year strategic journey).

SBS's goals are to:

- Reach more Australians with SBS's distinctive and compelling Charter content;
- Build audience awareness, scale and engagement on digital platforms to ensure SBS's relevance as people increasingly consume content on these platforms;
- Deliver an enhanced user experience for audiences on digital platforms to improve audience engagement and loyalty;
- Grow the share of funding that is invested toward the Charter by increasing returns from commercial activities, while continuing to innovate and find better ways of conducting existing operations; and
- Attract and retain the best people by making SBS a great place to work.

## 2 Overview of SBS (cont)

Figure 2.1: SBS Financial and Operational Performance FY2015–2018

<b>Metric</b>	<b>FY2015-16</b>	<b>FY2016-17</b>	<b>FY2017-18</b> (April year-to-date)
Monthly TV reach (five consecutive, network, total ppl)	13.1 million	13.1 million	12.8 million
Monthly prime time metro TV share (18:00 – 24:00, Network)	6.8%	7.1%	7.5%
Monthly prime time regional TV share (18:00 – 24:00, Network)	6.0%	6.6%	6.6%
Monthly prime time metro TV share (18:00 – 24:00) for SBS main channel	5.0%	5.0%	5.4%
All ALC Pages Unique Browsers (Monthly Average)	1.1 million	2.3 million	2.8 million
ALC Language Pages Unique Browsers (Monthly Average)	687,000	1.6 million	1.8 million
Monthly Average Audio Consumption (Streams and Podcast Downloads)	2 million	2.5 million	2.4 million
SBS Online Network Unique Audience (monthly average)	1.6 million	2.5 million	2.9 million (March FYTD)
SBS On Demand chapter views (monthly average)	9.8 million	14.5 million	24.5 million
Core commercial revenue	\$87.9 million	\$103.7 million	\$87.5 million
Employee engagement	70%	78%	77%



### Case Study – A unique multiplatform media offering for distinctive programs

In late 2016, SBS broadcast *First Contact* series 2, hosted by Ray Martin, which gave audiences the opportunity to test their beliefs against reality as expressed by Indigenous Australians during the journey of six high-profile participants who immersed themselves in Aboriginal Australia.

*First Contact* is an example of SBS's unique ability to utilise its ecosystem of media platforms to deliver an in-depth and authentic audience experience.

*First Contact* was simulcast on SBS and NITV over three episodes across three nights. A range of programs, including dedicated news and current affairs, allowed audiences to engage in a wider conversation about Indigenous issues including significant social media engagement via #FirstContact. A 360° *First Contact VR* enabled audiences to experience heartfelt messages from Indigenous Australians.

SBS in-studio forum, *First Contact – The Reunion*, in which the participants reunited after their life-changing journey, drew big audiences and *Awaken – First Response* on NITV, which was hosted by Stan Grant and explored issues contributing to the divide between non-Indigenous and Indigenous Australians, was among the highest rating programs since NITV's free-to-air launch in 2012. The documentary, *Servant or Slave*, which followed *First Contact* on NITV was the channel's highest rating program in history.

*First Contact* is one example of how SBS is uniquely placed to utilise its ecosystem of media platforms to deliver on its Charter to provide a distinctive audience experience.

### **Key other editorial, legislative and regulatory operational requirements**

SBS is heavily governed. In addition to preparing the Corporate Plan and Annual Report in accordance with the PGPA Act, in the course of its organisational operations, SBS must:

- Keep the responsible Minister informed of SBS's activities, and notify of significant decisions and issues that may affect SBS (s19 PGPA);
- Comply with government policy orders (GPOs) made by the Finance Minister (to the extent they do not affect the content or scheduling of programs) (s22 PGPA, s13 SBS Act);
- Prepare budget estimates covering its activities, which present the estimated financial impacts on SBS's activities (s36 PGPA);
- Measure and assess SBS's performance in achieving its purpose, and prepare annual statements about its performance in the annual report (ss27-39 PGPA);
- Appoint an audit committee to review SBS's financial and performance reporting, systems of risk oversight and management and internal control (s45(4) PGPA, s 17 of the PGPA Rule);
- Endeavour to achieve and maintain high standards as an employer (s55 SBS Act);
- Act as a model litigant in the conduct of litigation (Legal Services Directions 2017); and
- Operate with maximum transparency through many levers including Freedom of Information (FOI), Murray Order, PGPA Act reporting requirements and is compelled to answer any question on any aspect of its operations in open Parliament under Senate powers three times a year.

Whilst the constraints on SBS produce positive outcomes in maintaining SBS's integrity and respect amongst the Australian community it services, they also represent additional regulatory burden and constraints on SBS's flexibility in conducting its business compared to other media organisations. SBS for example cannot engage in so-called 'chequebook' journalism.

## 2 Overview of SBS (cont)

### Editorial decision-making

The SBS Board must ensure independence in all matters including editorial decision-making. SBS cannot cede editorial decision-making to any party in any circumstance. This invariably affects the nature of relationships SBS can form with program investors, funding bodies, participants in programs, sponsors and advertisers. Whilst this independence is critical to maintaining community trust and expectations of SBS, it also constrains the organisation's capacity to attract content partners, as they must be willing to give SBS ultimate editorial control.

These are constraints which do not apply to commercial competitors which can access funds, support, stories and participation from high-profile figures by offering editorial control. This is the basis for many sponsorship, brand-funding and advertising relationships in commercial environments.

Additionally, there are editorial constraints on SBS in news gathering and programs to ensure accuracy and balance which apply at a much higher level to SBS, being required of the organisation under the SBS Act.<sup>52</sup> This is distinct from commercial counterparts whose obligations are set out under the Commercial Television Industry Code of Practice.<sup>53</sup>

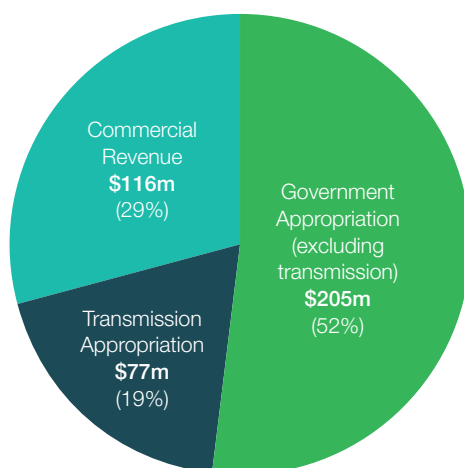
### 2.4 SBS's funding environment

SBS conducts its operations across four free-to-air television channels, the SBS On Demand service, 68 in-language programs broadcasting across three radio networks and podcast services, online news and subject-matter sites as well as several apps.

SBS reaches an average of 13 million Australians each month through its television channels (SBS, SBS VICELAND, Food Network and NITV) and eight radio stations (SBS Radio 1, 2, 3 and 4, SBS Arabic24, SBS PopDesi, SBS Chill and SBS PopAsia). Engagement is being significantly extended through SBS's digital services, including SBS On Demand and portals which make online audio programming and information available in languages other than English.

In 2016-17, SBS's operations were conducted on a budget of \$398 million a year, with \$282 million of that provided via government appropriation. This includes \$77 million in transmission costs. Advertising and commercial revenues contribute the remainder of SBS's funding, and are subject to the similar year-to-year fluctuations as faced by commercial counterparts.

Figure 2.2: Commercial revenue contributes 29 per cent of SBS's revenue<sup>54</sup>



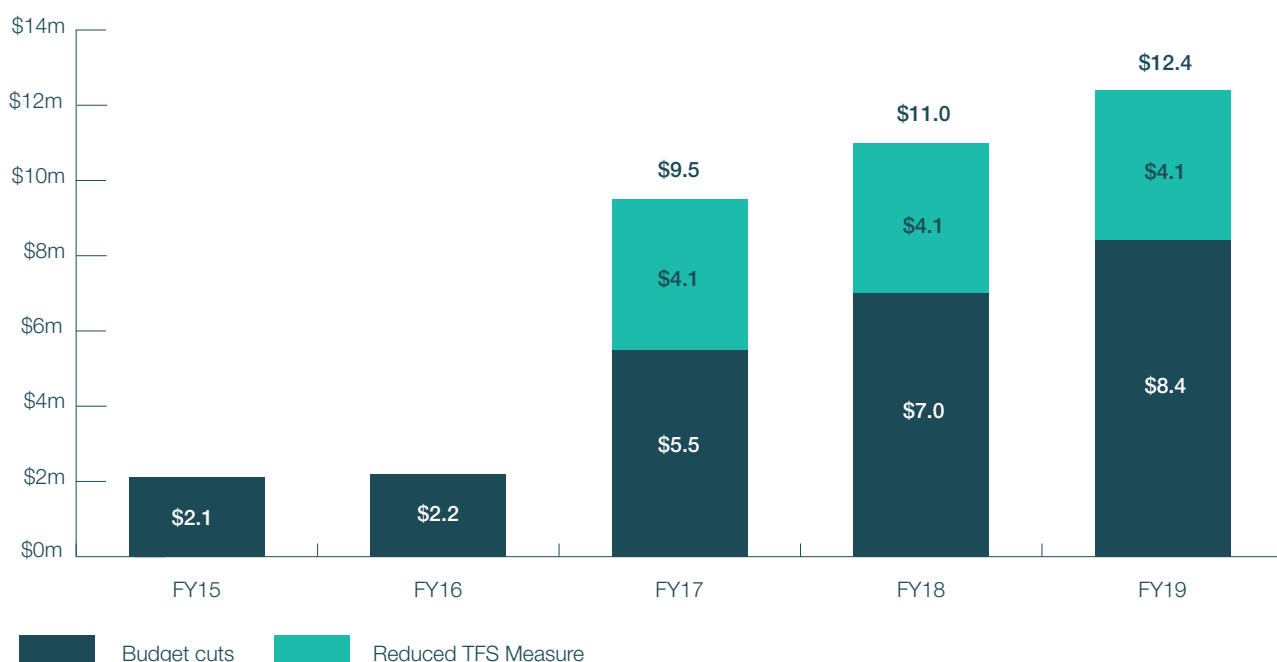
52 SBS Act, Section 10(1)(c)

53 [http://www.freetv.com.au/content\\_common/pg-code-of-practice.seo](http://www.freetv.com.au/content_common/pg-code-of-practice.seo)

54 SBS financial data 2016-17

Over five years, more than **\$37.5 million in budget cuts** have been applied to SBS by the Federal Government. These cuts have necessitated significant structural change within SBS in a highly competitive, rapidly changing environment for media operators. Additionally, in 2013, the provision of digital services was legislated in the SBS Act, without additional funding for digital services.

**Figure 2.3 Budget cuts 2014-15 to 2018-19**



As outlined in Figure 2.3 above, significant funding cuts have been applied to SBS between 2014 and 2019, including cuts arising from the Government’s 2014 Efficiency Study into the ABC and SBS, led by Peter Lewis.

In addition to those cuts, the Government cut \$28.5 million from SBS in anticipation of SBS being able to earn back incremental net revenue over four years via increased advertising flexibility. However, this Government policy was subject to heavy and extensive lobbying by the commercial television sector. The legislation did not pass the Senate on the first occasion in 2015, and was eventually withdrawn by the Government in 2017. The resulting funding shortfall has been returned in each successive budget year, though it has not been fully returned for the year 2019-20 and subsequent years.

The Lewis Efficiency Study specifically commended SBS for the integrated annual planning process which ensures the regular identification of efficiency initiatives as a means to free-up funding to invest in content and service delivery.<sup>55</sup> The Review’s efficiency recommendations for SBS had already been identified or implemented by SBS as part of this regular efficiency planning.

55 ABC and SBS Efficiency Study, [https://www.communications.gov.au/sites/g/files/net301/f/ABC\\_and\\_SBS\\_efficiency\\_report\\_Redacted.pdf](https://www.communications.gov.au/sites/g/files/net301/f/ABC_and_SBS_efficiency_report_Redacted.pdf), April 2014

## 2 Overview of SBS (cont)

In addition, a measure to support SBS in developing local content has been reduced from \$20 million to \$8 million over three years from 2017.

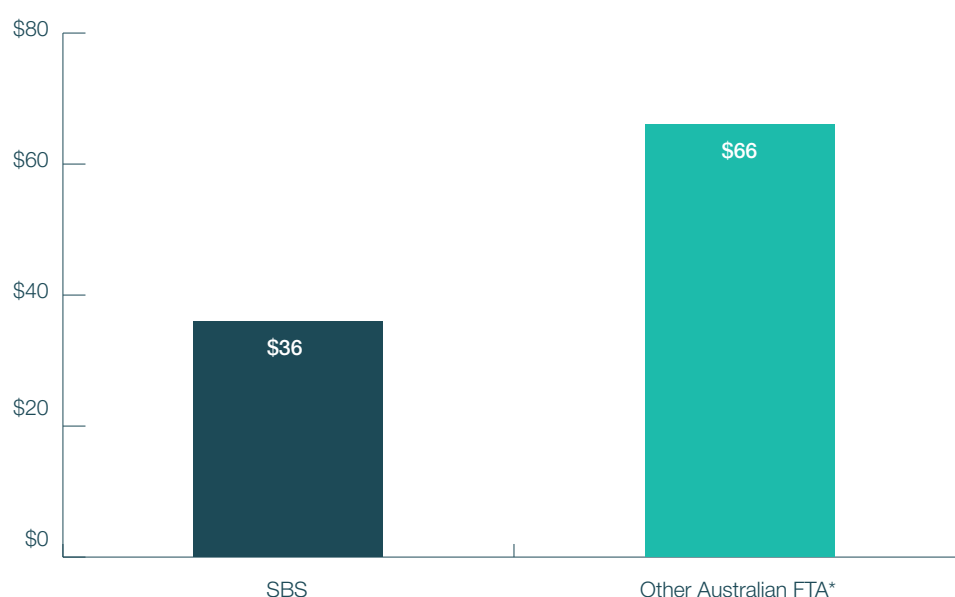
As well as absorbing funding cuts and maintaining delivery of the SBS Charter across an increasing number of required platforms, SBS has been able to identify significant operational efficiencies in its business activities as a result of being a lean, agile organisation accustomed by virtue of its historically modest funding and ability to do more with less. This innovation has enabled SBS to increase the proportion of funding it is able to direct towards content activities.

### Efficiencies drive local content investment

SBS's capacity to reinvest efficiencies into content has been a crucial component of its ability to deliver more Australian content. In particular, SBS has been able to invest in content which enables a diversity of cultures to be represented in mainstream media, at a much lower cost than its counterparts.

It costs other Australian free-to-air operators 83 per cent more than SBS to reach each viewer. If SBS were, as it has been suggested, inappropriately competitive, it would be spending an equivalent amount (or more) than its commercial counterparts to reach each viewer. The reality is that SBS has been a highly effective operator able to maximise the value of its investments to audiences as demonstrated in Figure 2.4 below.

Figure 2.4: Estimated Television costs per viewer reached in dollars (metro) 2016-17<sup>56</sup>



<sup>56</sup> Annual reports; SBS analysis; OzTAM Metro; 5 Capital City; Network SBS TTL, Network ABC TTL, Network Seven TTL, Network Nine TTL and Network TEN TTL; July 2016 - August 2017; Sun-Sat 02:00 - 02:00; TTL Individuals; Reach (5 mins cons); Consolidated 28 from 01/07/2016 to 31/08/2017. Note: \* Average of other Australian FTA broadcasters' cost per viewer reached. ABC, Seven and Nine Networks are based on June year end. Ten Network costs are based on run-rate from 1H FY17 disclosure (full year results not available due to CBS takeover) and are based on August year end.

## 2 Background to the market

### Key points

- The Australian media market is changing at a breathtaking pace. In recent years there has been a marked shift away from watching live broadcast TV towards consuming content online and on demand – what consumers want, when they want it and on a device of their choice. This shift has been driven by the growth of on demand content delivery platforms such as Netflix, search engine giants like Google and social media platforms such as Facebook, YouTube and Amazon.
  - The shift in viewing behaviours has been most pronounced among younger age groups.
  - Millennials now spent less than 30% of their viewing time watching live programming, which still remains the dominant viewing behaviour for older age groups.
- These rapid changes have created challenges for the business models for television broadcasters globally, including in Australia. The value of traditional TV licences has fallen accordingly, as viewing patterns have shifted.
- Commercial FTA broadcasters, STV and the national broadcasters have sought to provide on demand offerings to continue to remain relevant to younger audiences and to compete with the growth of global platforms.
- Against this broader market context, SBS remains the smallest player in the FTA television market with a current prime time market share of 7.3%. Its market share is higher among older audiences but lower among younger audiences including the 25-54 age group of most interest to advertisers.
- While its market share increased with the introduction of SBS VICELAND (replacing SBS 2) and Food Network, both attract around only 1% of the overall prime time viewing market, while the market share of NITV is around 0.2%.
- While some concerns have been raised about the extent to which SBS is increasingly competing with commercial networks, its market share has remained relatively stable since 2016.
- No SBS programs typically appear in the top 50 programs, reflecting in part a greater focus on factual programs and news and current affairs over sport and reality TV.
- While SBS On Demand is well recognised among on demand users, data on market share for on demand viewing remains incomplete. Existing surveys suggest that SBS On Demand use remains less widespread than AVOD offerings by other commercial FTA broadcasters and major SVOD platforms.
- As a result of current advertising restrictions and differences in audience demographics, SBS currently has the smallest share of the declining FTA television advertising market (approximately 2%) and a much smaller share of the broader FTA television and online advertising market.
- The impact of any competitive behaviour by SBS must be considered in the context of the much larger impacts of this changing media market.

The Inquiry has been asked to consider how the ABC and SBS 'operate within the markets of which they are a part and the basis on which they are competing with the private sector.' This chapter describes the market dynamics, highlights key audience trends and discusses how broadcasters and other stakeholders are responding to those changes in order to meet audience needs and keep pace with changes in technology. It then examines SBS's role in the market in section 2.3.

# Excerpt 1: Deloitte Access Economics (cont)

## 2.1 Market overview

For the purposes of the Inquiry it is not necessary to define the markets in which SBS operates. Nevertheless, SBS competes in three main areas, for:

- **Audiences:** SBS must attract an audience against the entire spectrum of media participants. In principle, its broadcast channels are primarily competing with the ABC and commercial free-to-air (FTA) TV providers. However, it is also broadly competing with subscription television (STV) players, subscription video on demand providers (SVOD) radio, myriad digital platform<sup>3</sup> providers, and news organisations such as Fairfax and News Corporation. Arguably, the global nature of the media market is such that SBS also competes against significant global players in each of these media formats, such as the BBC, Netflix, theguardian.com, NYT.com and others.
- **Advertising spend:** SBS competes against the same organisations for advertising as it does for audiences. It should be noted that advertising spend has shifted significantly to global digital platforms over the past decade. As the Issues Paper notes, online advertising now accounts for more than half of the total Australian advertising market. In addition, outdoor advertising can be seen as an attractive alternative mass media format. SBS also competes against highly trafficked digital sites focused on key advertising verticals such as recruitment, car sales and real estate e.g. Domain.com.au or carsales.com.au for digital advertising dollars.
- **Content:** SBS acquires and commissions content and as such competes against the ABC, all commercial FTA broadcasters, STV providers, SVOD players and all digital platforms for whom video content is increasingly part of the social media customer proposition. In addition, content is being used by organisations such as telecommunications and mobile providers as a means of differentiation, significantly increasing the competitor set for unique and premium content. SBS competes for Australian content, food programming, factual content, sporting content and drama with a broad set of competitors as noted above, but faces less competition for certain genres which are aligned to its specific Charter requirements and differ from content shown on other broadcasters e.g. foreign language programming.

## 2.2 Broader market trends

The nature of competition for audiences, advertising and content has changed significantly over time.

When SBS commenced full-time transmission in 1980 it faced competition from the ABC and a small number of analog commercial FTA providers. TV competed for the eyes and ears of the Australian public against the (Australian) print media and radio networks, but the boundaries of these markets were distinct and geographically defined.

Today these boundaries are much broader, much more opaque and in some instances arguably no longer exist. As the Issues Paper notes:

*This Inquiry is operating in the context of rapidly changing media markets. Boundaries between traditional media markets are dissolving, new platforms exist for distributing news and entertainment, and revenue streams are changing. Consumers are adopting new forms of media rapidly, and the increased competition between producers and distributors is evident from these developments.<sup>4</sup>*

Traditional pay-TV or STV has been available in Australia since 1995 and now is represented in the market by Foxtel (which acquired Austar in 2012 and Optus Vision in 2001) and IP based pay-TV providers such as Fetch TV. However, a recent and significant change in the market for audiences and content has been the emergence of SVOD services such as global behemoth Netflix along with local providers such as Stan and Foxtel Play (currently called Foxtel Now). Most recently, Amazon's globally successful SVOD offering (Amazon Prime) was launched in Australia. These services have seen significant uptake since only launching in the past 4 years. Thirty-two percent of respondents to Deloitte's *Media Consumer Survey 2017* indicated they subscribe to SVOD services, a level which has surpassed traditional pay-TV subscriptions (31%) for the first time. Further, audiences are subscribing to multiple

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<sup>3</sup> For the purposes of this report, and consistent with the current ACCC Inquiry, the term 'digital platforms' encompasses digital search engines, social media platforms and other digital content aggregation platforms. This includes Google, Facebook and YouTube.

<sup>4</sup> Issues Paper, p. 5

services (32% of SVOD subscribers access multiple services to get the content they want) and in the past year SVOD subscription growth has been the highest in older generations.<sup>5</sup>

Stan and Foxtel Now as local providers, have a focus both in acquiring international productions and in acquiring and commissioning local Australian content. Netflix is the most subscribed to service in Australia and globally. Around 7.5 million Australians subscribe to Netflix, and the service has over 100 million subscribers worldwide.<sup>6</sup> Netflix has also been commissioning content for some time on the global stage. It is reported that Netflix's annual content spend is over US\$7 billion.<sup>7</sup>

In addition to SVOD, there is a long observable trend towards time and place shifting of content consumption. As such, SBS and the ABC, as well as the commercial FTA players have all launched streamed catch-up or on demand services and apps, some of which are funded as advertising video on demand (AVOD). These provide audiences with an 'anytime-anywhere' ability to view and catch up with previously screened and unscreened content as well as archive or back catalogue programming.

Large global platforms such as Google, Facebook, Amazon and Apple are also increasingly competing with SBS for audiences, advertising dollars and content. Amazon in particular has invested significantly in original content and presents a potentially disruptive offer to consumers in bundling SVOD services with Amazon Prime delivery and e-commerce membership (as it does in the UK and other markets). Apple meanwhile has focused, like many telecommunications providers on 'owning the living room' through set top boxes (Apple TV) and integrating the viewing experience with device ownership and bundled services. News Corp Australia has a large influence across media platforms, owning a stake in Foxtel, along with its newspapers and digital news sources. Google and Facebook offer a range of services (including search engines, social media services, messaging, live content, short form video, mapping and content aggregation) with programmatic advertising selling and audience data services being provided to advertisers.

### 2.2.1 Trends in viewing

Despite, or even because of the factors highlighted above, watching 'TV-type' content remains as popular as ever. The amount of time the average Australian spends each week watching movies or TV shows on any device increased from 17.2 hours in 2015 to 17.5 hours in 2017<sup>8</sup>. However, the way in which this content is watched is changing.

The average number of hours spent watching traditional broadcast TV on in-home TV sets has fallen from 3 hours and 10 minutes per day in the fourth quarter of 2010 to 2 hours and 27 minutes per day in the fourth quarter of 2017.<sup>9</sup> At the same time, other TV screen use (which excludes broadcast and playback, but includes online catch-up services, streaming, internet browsing and the use of SVOD services) has risen from 53 minutes per day in 2014 to 67 minutes per day in 2017.

Screen Australia recently conducted a survey of Australian viewers of professionally developed online screen content.<sup>10</sup> The analysis suggests that while broadcast TV viewing has declined, it remains the most common platform for video on demand (VOD) users. While broadcast catch-up viewing time has doubled since 2014, VOD audiences spend more time consuming SVOD, TVOD and other AVOD services, highlighting the extent to which changes in the market are being driven by global platforms such as Netflix to a greater degree than by local catch-up TV services.

<sup>5</sup> Deloitte Media Consumer Survey 2017

<sup>6</sup> Roy Morgan (2018) *Netflix hits new high in Australia – 7.6 million*. <http://www.roymorgan.com/findings/7343-netflix-subscriptions-june-2017-201709270713>; Joan E. Solsman (2018) *Netflix hits 125 million subscribers worldwide*. <https://www.cnet.com/news/netflix-hits-125-million-subscribers-worldwide/>

<sup>7</sup> New York Times (2017), 'Netflix Says It Will Spend Up to \$8 Billion on Content Next Year', <https://www.nytimes.com/2017/10/16/business/media/netflix-earnings.html>.

<sup>8</sup> Media Consumer Survey 2017, p. 9

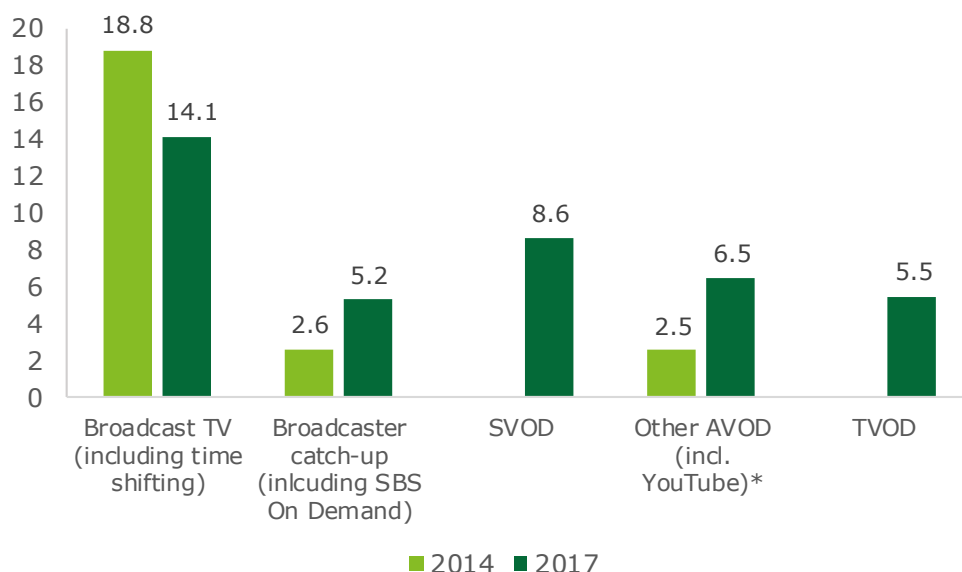
<sup>9</sup> Neilsen, Australian Video Viewing Report Quarter 4, 2017.

<sup>10</sup> It should be noted that only 61% of Australians indicated they watched professionally produced screen content online so this is not a representative sample of the Australian population and the results should be interpreted accordingly.



# Excerpt 1: Deloitte Access Economics (cont)

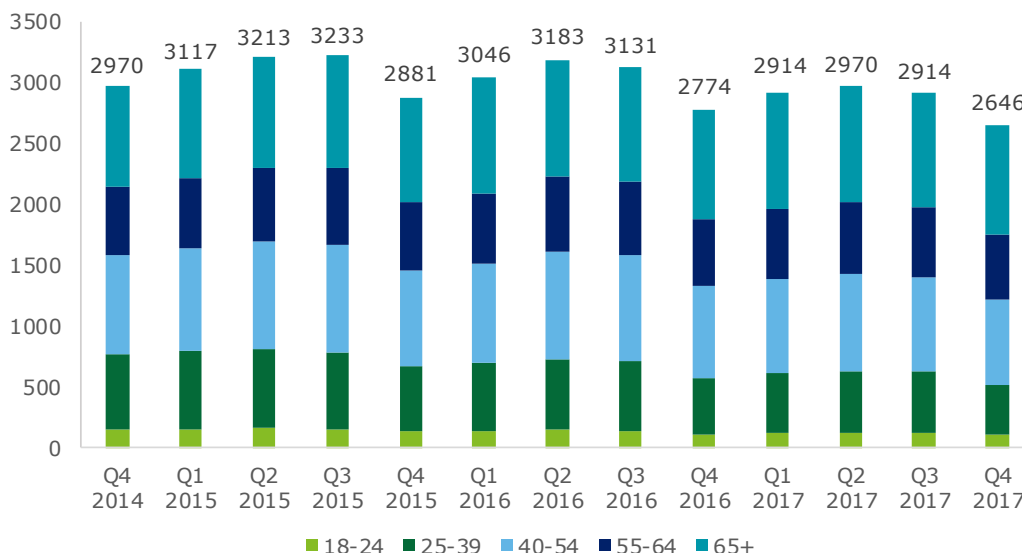
Chart 2.1: Average hours per week for video on demand users



Source: Screen Australia (2018) Online & On Demand 2017: Trends in Australian online viewing habits. Note: TVOD represents Transaction Video On Demand. \*In 2014, audiences were only asked about YouTube viewing so this may underrepresent Other AVOD average hours.

There has also been a decline in total prime time average audiences as shown below (Chart 2.2) from a peak of 3.2 million in the third quarter of 2015 to 2.6 million for the last quarter of 2017. This decline has been observed across all ages groups, but is most pronounced among younger audiences.

Chart 2.2: Changes in prime time television audiences over time by age group.



Source: OzTAM 5 City Metro average audiences, 1800-2400, FTA TV (incl. spill) 2014-2017.

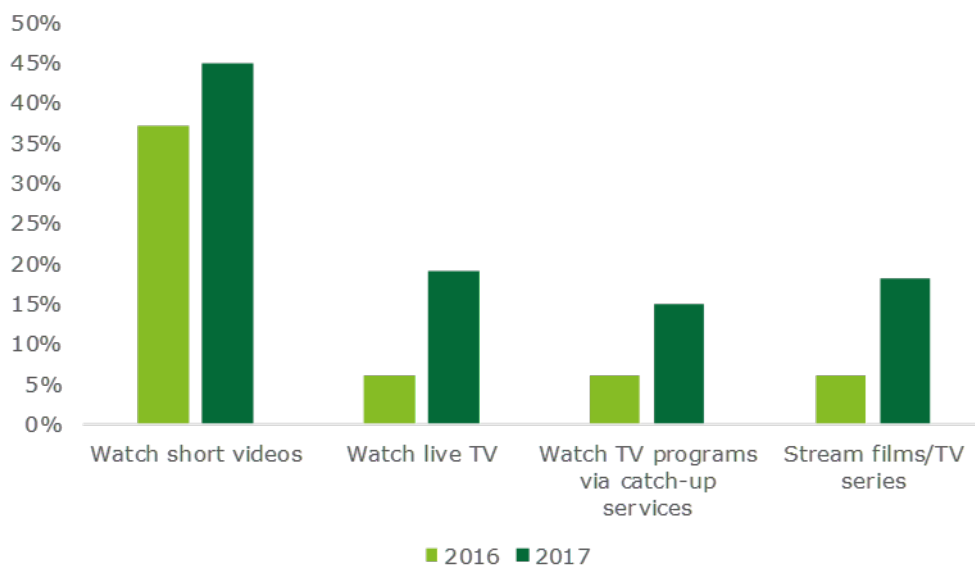
Audiences’ desire to consume content on a ‘what I want, when I want, where I want and on the device of my choice’ basis<sup>11</sup> is reflected in the use of mobile devices for watching videos and live TV. Smartphone penetration in Australia is nearly ubiquitous at 88% and growth in watching live TV and catch-up services on mobiles is rapid, tripling in 2017, compared to 2016.<sup>12</sup> Approximately 70% of 18-34 year olds watch videos on their smartphone each week, with growth particularly observed in the 25-34 age group.

<sup>11</sup> Issues Paper p6

<sup>12</sup> Deloitte, *Smart everything, everywhere: Mobile Consumer Survey 2017*.



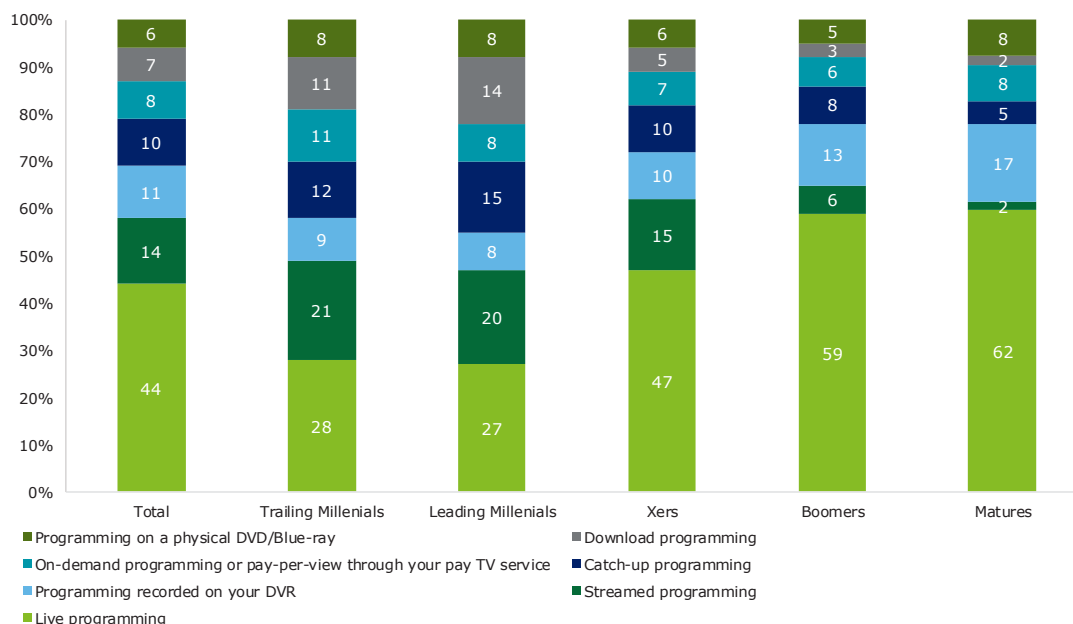
Chart 2.3: Weekly phone activities- video views- all age groups



Source: Deloitte Mobile Consumer Survey 2017.

Much of the shift away from broadcast TV is being driven by younger audiences, including the shift to mobile devices on which to watch TV-type content as outlined above. In order to capture and retain younger audiences, who potentially have many years of viewing in front of them, broadcasters continue to innovate in their content, programming and platform offerings.

Chart 2.4: Viewing patterns by age demographic



Source: Deloitte Media Consumer Survey 2017.

Note: Trailing Millennials are those aged 14-27, Leading Millennials are those aged 28-33, Xers are those aged 34-50, Boomers are those aged 51-69 and Matures are those aged 70+.

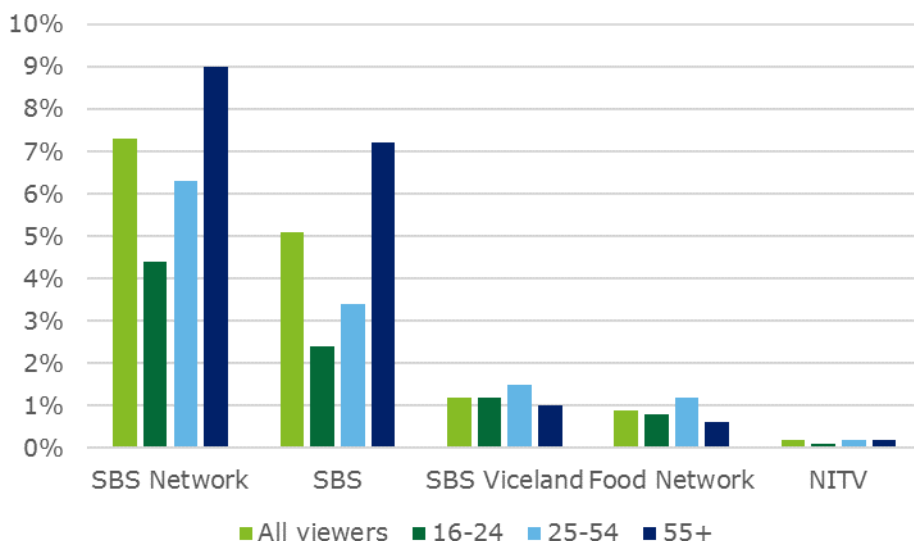
# Excerpt 1: Deloitte Access Economics (cont)

## 2.3 SBS's role in the contemporary media market

In the context of these broader trends, it is useful to consider SBS's role in the media market – noting that the broadcasting market as a whole is facing challenges from a converging media space.

SBS is the smallest network in Australia. The prime time market share of the SBS network, its main channel (SBS), SBS VICELAND, Food Network and NITV is outlined in Chart 2.5 below.

Chart 2.5: SBS audience share of prime time (6pm-12pm) metropolitan television audiences 2018



Source: OzTAM data provided by SBS for 2018 calendar year to date.

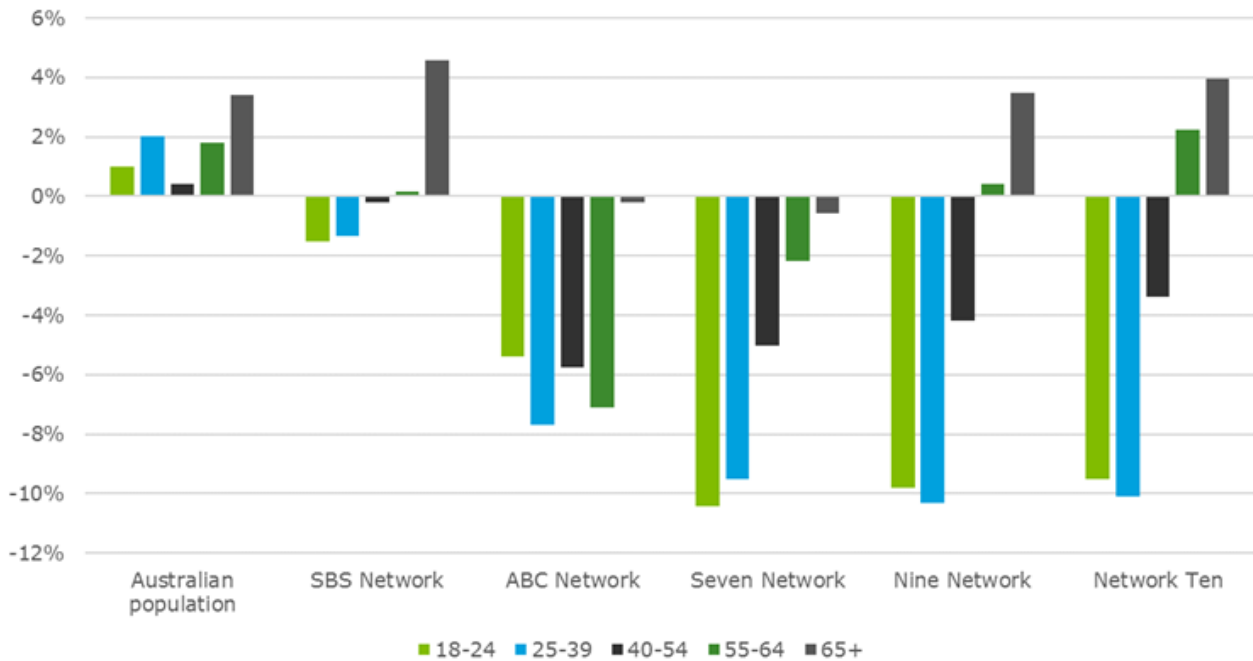
The total market share across the SBS Network of prime time metropolitan audiences 7.3% over the 2018 calendar year to date. SBS's audience is strongly skewed towards older viewers, with a 9% market share of those aged over 55, but only a 6.3% market share of the 25-54 year old demographic, which is typically most attractive to advertisers. While these figures relate to prime time viewing, SBS's overall share of total audiences is smaller at 6.2%.

SBS VICELAND and Food Network had a market share of 1.2% and 0.9% respectively in 2018 year to date, with both having slightly higher relative shares among those aged 25-54. The market share of NITV did not exceed 0.2% in any age group.

Over time, the total prime time market share of the SBS Network has risen from 5.6% in 2013, to 7% in 2016 partly as a result of introduction of the Food Network, but has since stabilised with a prime time market share of 7.4% in 2017 and 7.3% in 2018 (calendar year to date).

Chart 2.6 below shows how FTA audience numbers have generally fallen since 2012, with the only (small) gains being posted in older age groups for SBS, Nine Network and Network Ten. The audience decline in the 18-54 age group for other broadcasters are experienced by all broadcasters and is consistent with increased competition from new and emerging media platforms and technologies across the sector rather than a substantial redirection of viewers from the commercial FTA broadcasters to the public broadcasters.

Chart 2.6: Changes in Australian population and audience 18:00-24:00 from 2012 to 2017

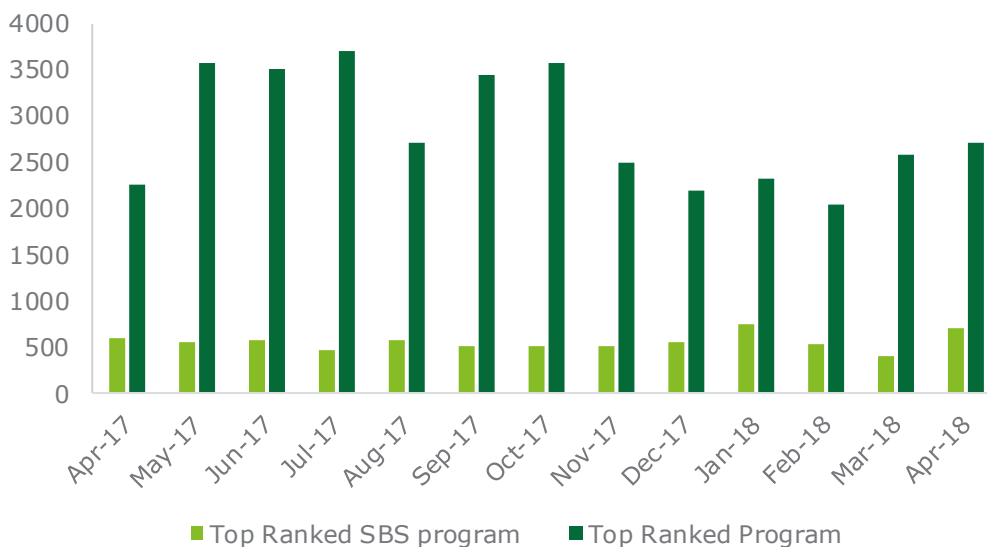


Source: Australian Bureau of Statistics; OzTAM 5 city metro average audiences, 5-year compound annual growth rate, 2012-2017.

The Issues Paper notes concerns raised in the Free TV submission to the House of Representatives Standing committee on Communication and the Arts Inquiry about the extent to which SBS is competing with commercial FTA players to provide content of commercial appeal.

While some SBS prime time shows do draw large audiences they typically receive a relatively small share of the audiences relative to the prime time programs shown by commercial FTA broadcasters. Chart 2.7 shows the audiences for the most popular SBS programs for each month from April 2017 to April 2018. Over the last 12 months only 2 SBS programs ranked in the top 100 (based on total audience) in any given month and average audiences ranged from 13% to 32% of those achieved by the most popular show in that month.

Chart 2.7: Top ranked SBS programs and top ranked program (thousands)

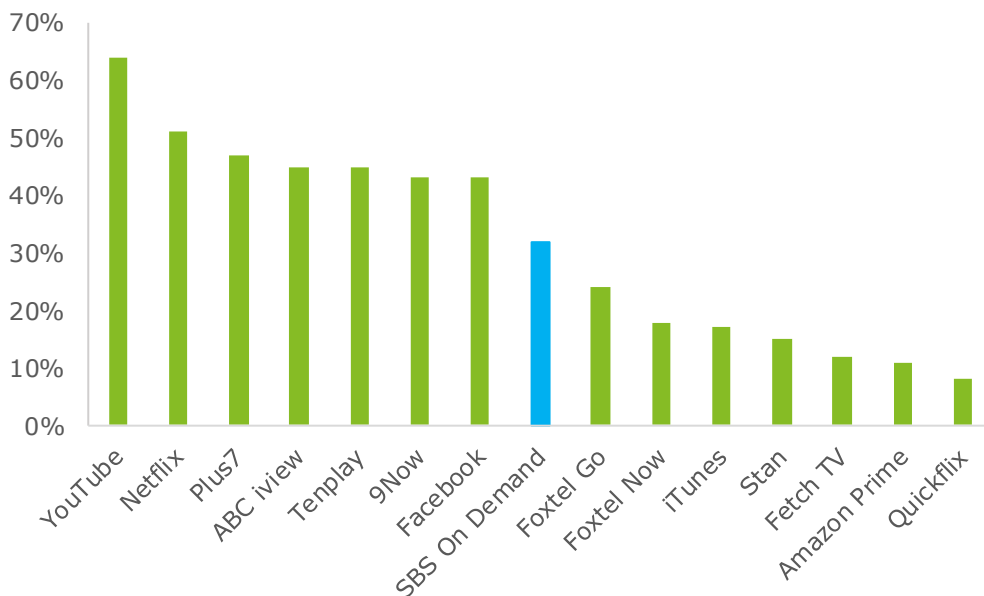


Source: Deloitte Access Economics analysis of OZTAM data.

## Excerpt 1: Deloitte Access Economics (cont)

Determining the market share of SBS in the VOD market is a complicated exercise as there is limited robust data on usage and a similar challenge exists for radio. However, data from Screen Australia's Online and On Demand 2017 study indicates that based on a sample of video on demand users, 32% had used SBS On Demand in the last month. This reveals that use of SBS On Demand lags that of YouTube, Netflix, Facebook and the catch-up services offered by the ABC and commercial FTA broadcasters.

Chart 2.8: Proportion of VOD users using VOD services at least monthly



Source: Screen Australia (2018) Online & On Demand 2017: Trends in Australian online viewing habits.

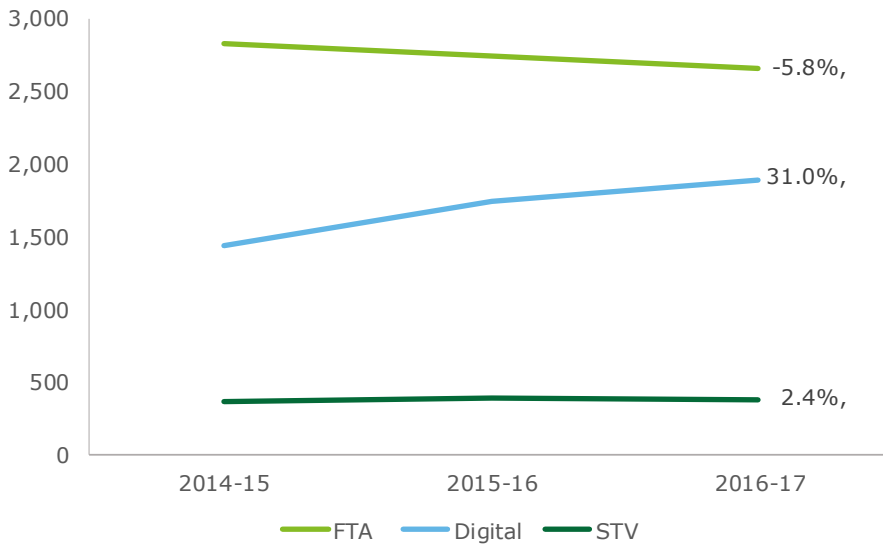
Note: Survey was of video on demand users so does not represent a representative sample of the Australian population

### 2.4 Advertising revenue

The advertising market is increasingly moving online. Data published by the Commercial Economic Advisory Services of Australia shows a longer-term trend of the online share of the total advertising market rising from 6.1% in 2005 to 50.7% in 2017. By comparison, the share of television advertising has fallen from 37.5% to 23.8% of the total advertising market.

In recent years this trend has largely been manifest through flat advertising revenue for commercial FTA players and STV, while growth in digital advertising continues at pace, largely as a result of a shift of advertising to social sites and search engines. Chart 2.9 draws on data from SMI, which contains bookings for a range of media agencies. The chart shows that advertising revenue in the FTA sector has fallen 5.8% since 2014-15 and digital revenue has increased 31%, while STV advertising revenues have remained relatively stable, up by just over 2%.

Chart 2.9: Advertising revenue by sector (\$ million) and change since 2014-15

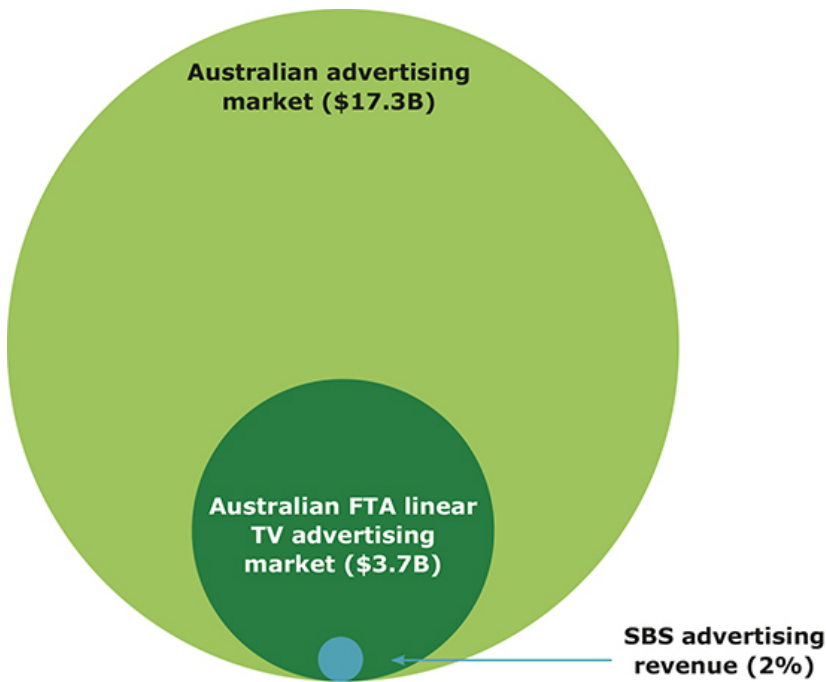


Source: SMI Media Trends Report June 2017.  
Note: Data labels indicate growth from 2014-15 to 2016-17.

### 2.4.2 SBS’s share of the advertising market

In 2016-17, total SBS television advertising revenue represented approximately 2% of the \$3.7 billion FTA linear TV advertising market and as such positions SBS as having the smallest relative to the commercial broadcasters (Figure 2.1). Total advertising revenue for SBS was \$93 million in 2016-17, which equated to 0.5% of the total Australian advertising market based on industry revenue figures.

Figure 2.1 SBS and the Australian advertising market 2017/18



Source: PwC Media Outlook; SBS internal data. Note: PwC forecasts for advertising market revenue have been taken from CY17. SBS shows financial year 2016-17. These figures for the total advertising market are higher than those contained in the SMI Media Trends report as this does not capture all advertising revenue.

# 3 SBS is a niche operator with distinctive services

## 3.1 How SBS differentiates from its counterparts across all channels and platforms

Issues Paper questions in consideration:

### Question 5

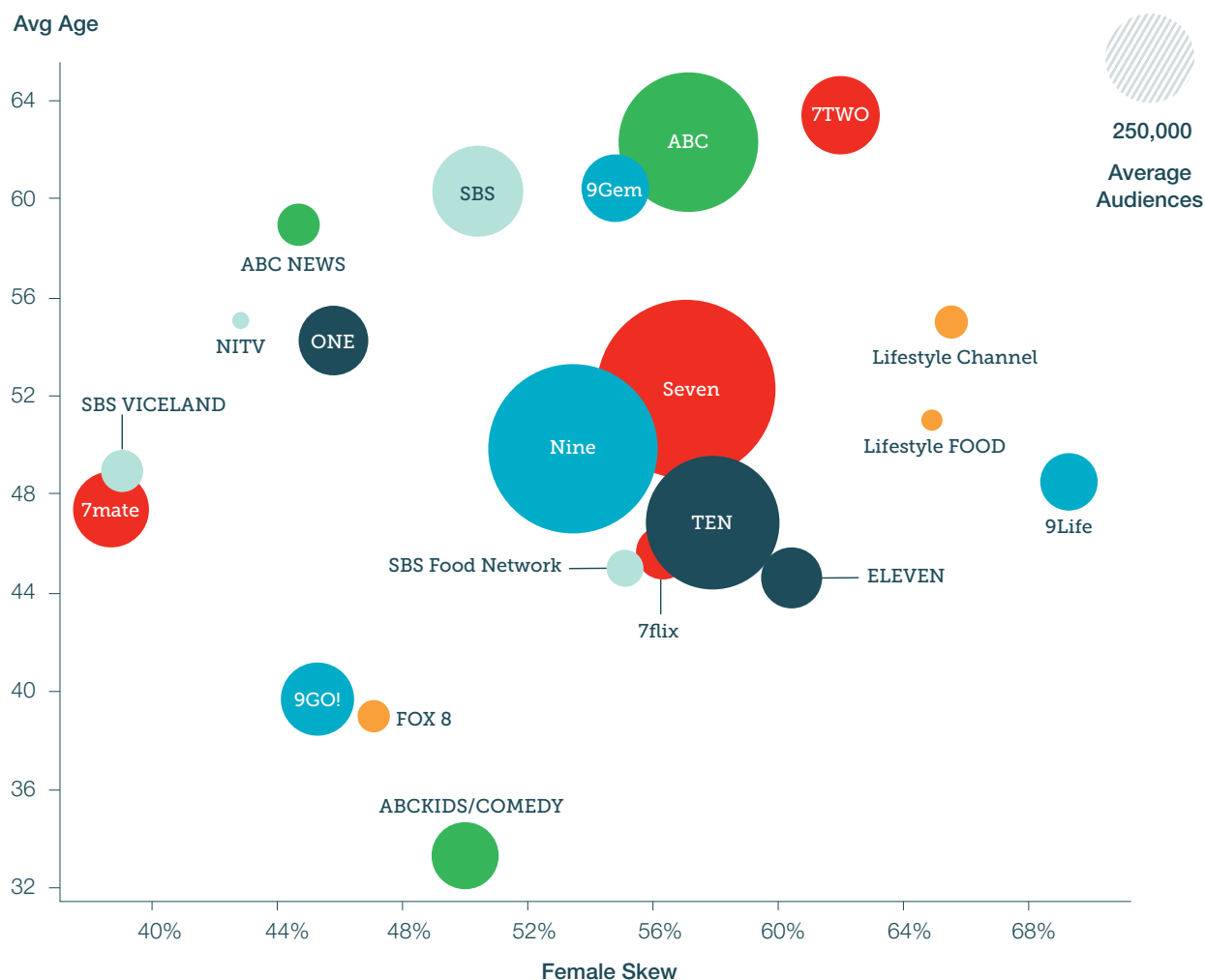
In view of the general principles of competitive neutrality what relevance does the SBS give to Section 2(g) of its Charter that the SBS in relation to its radio and television services “contribute to the overall diversity of Australian television and radio services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the community broadcasting sector”?

### Question 6

Noting that this Charter provision applies specifically to television and radio, is this requirement considered in relation to SBS On Demand?

As previously discussed, inherent within the SBS Charter and outlined in the SBS Corporate Plan is SBS’s commitment to distinctiveness to other media offerings. This focus on the Charter is fundamentally what drives SBS to provide differentiated media services. The distinctiveness of SBS’s portfolio of television services compared to other media operators is continuously reviewed and monitored by a committee of SBS Executives.

Figure 3.1: SBS Channel Portfolio demographics, 2017–18, April year-to-date<sup>57</sup>



### SBS - A distinctive network offering

- The SBS main channel occupies a clearly distinctive place within the media landscape of free-to-air television offering, skewing to older audiences, and in a relative sense slightly more male and vastly smaller than its primary channel counterparts.
- The biggest overlap between all free-to-air television offers in market is between Nine Network, Seven Network and Network Ten.
- SBS VICELAND is a small, niche channel which occupies a distinctive place, skewing younger than the SBS main channel and more male, with minimal overlap to only 7mate.
- NITV occupies a distinctive place and very small part of the overall market.
- Food Network occupies a small, largely distinctive space in comparison to other free-to-air channels, attracting different audiences than other SBS channels.

<sup>57</sup> OzTAM & RegTAM, FTA & STV Database, 1800 - 23:59, Consolidated 28, July 2017- April 2018, FTA: 5 City Metro / Combined Agg. Markets. STV: National STV, Total Individuals

### 3 SBS is a niche operator with distinctive services (cont)

#### Culturally and linguistically diverse programming

SBS, distinct from commercial networks, actively and strategically considers CALD programming across its portfolio. The lack of availability of CALD content from other media operators is considered by SBS in determining the market need to broadcast a high level of CALD content to ensure diversity of content available in the domestic market, in line with its Charter.

**91 per cent of SBS audiences say SBS helps them find content they'd never find anywhere else.<sup>58</sup>**

SBS sets targets to measure and improve the proportion of CALD programming to track its commitment to servicing diverse communities and maintain the availability of diverse perspectives accessible to Australians. SBS holds itself accountable to the Australian community through regular consultation to gain audience views on adherence to the Charter and distinctiveness of programs. These processes are part of robust measures SBS adopts to ensure it is contributing to the overall diversity of content available in the domestic media sector.

CALD content is programming that significantly address culturally and linguistically diverse themes relating to non-English speaking communities and individuals. Alongside LOTE programming, this includes cultural integration and exploration, food and cultural cooking practices, history, human rights and international relations. Related news, current affairs and international sporting events are also included, as well as content exploring Australian Aboriginal and Torres Strait Islander peoples and their cultures.

**88 per cent of SBS audiences say SBS increases social cohesion through telling stories from different perspectives and from different cultures.<sup>59</sup>**

Where programming on SBS is not specifically CALD, its critical purpose is to engage more audiences with the SBS network in order to promote the diverse and distinctive offering accessible across platforms and channels, including CALD programs.

In addition to on-screen commitments, the SBS Diversity Talent Escalator demonstrates the need to address lack of diversity in the production sector, and shows that there is a market-need for a focus on CALD content. This is an SBS initiative to increase representation of Australia's diverse communities in television production in a co-funded partnership with several state-based screen agencies. SBS is uniquely placed to fill this market need, given its legislated purpose.

CALD targets are reported to Government via performance criteria in Portfolio Budget Statements (PBS), noting targets must be reviewed and approved by the Federal Government each year.

58 The Exchange, Base: All respondents. N=595;The dataset has been weighted to be representative of SBS viewers (2017; OzTAM and RegTAM 18:00-24:00), based on age and gender

59 The Exchange, Base: All respondents. N=595;The dataset has been weighted to be representative of SBS viewers (2017; OzTAM and RegTAM 18:00-24:00), based on age and gender



Against its PBS performance criteria for 2016–17 SBS delivered:

- 12,768 hours of CALD programming on the SBS main channel and SBS Viceland, 42 per cent above the 9000 hour target;
- 105 hours of locally commissioned programming on the SBS main channel and SBS Viceland, 31 per cent above the 80 hour target;
- 98 per cent of radio programs in LOTE, exceeding the 90 per cent target;
- Over 1300 hours of programs in subtitles on the main channel, nearly 1000 hours on NITV, an additional 160 hours of subtitling in digital and online environments as well as 1320 hours on SBS VICELAND; and
- Closed captions for over 6130 hours of programs on the SBS main channel and online.

### **SBS main channel**

The SBS main channel is the destination for distinctive Australian storytelling with a point of difference, in-depth global news and current affairs, sport which unites communities, and the world's most diverse dramas and documentaries. Audiences come to the SBS main channel for the bigger picture on national and global issues, and entertainment which inspires greater understanding and acceptance of the value of culture and diversity.

The SBS main channel is an aggregator of SBS's content and where audiences can obtain a sense of SBS's objectives and distinctiveness. It's also the primary destination which SBS can leverage to promote the breadth of its services on other channels and platforms. The prime time market share April year-to-date for the SBS main channel is 7.3 per cent, and 6.2 per cent overall.

In FY18 April year-to-date, the SBS main channel has averaged 73 per cent CALD programming each month in total hours and 58 per cent CALD in prime time on a monthly basis (18:00–24:00). The prime time affords SBS a critical opportunity to engage Australians with its esteemed news and current affairs programs and engage more audiences overall with the SBS network. In addition to news and current affairs, other key themes include history and cultural exploration as well as LOTE programming.

#### **A commitment to CALD drives commissioning for the main channel – Sunshine**

*Sunshine* is a 2017 SBS miniseries set in Melbourne and explores the hope and heartbreak of a young South-Sudanese man making his way in Australia. It was set against the backdrop of highly publicised reports of youth gangs in the city. Whilst only a quarter of audiences had a positive view of the South-Sudanese community prior to watching the series, almost 60 per cent said they felt more positive about the community in Victoria afterwards.

Source: The Exchange, *Sunshine* In Language Questionnaire, 21/11/17 till 02/01/18.

### 3 SBS is a niche operator with distinctive services (cont)

Figure 3.2: SBS main channel (24 hours) CALD FY18 April year-to-date<sup>60</sup>

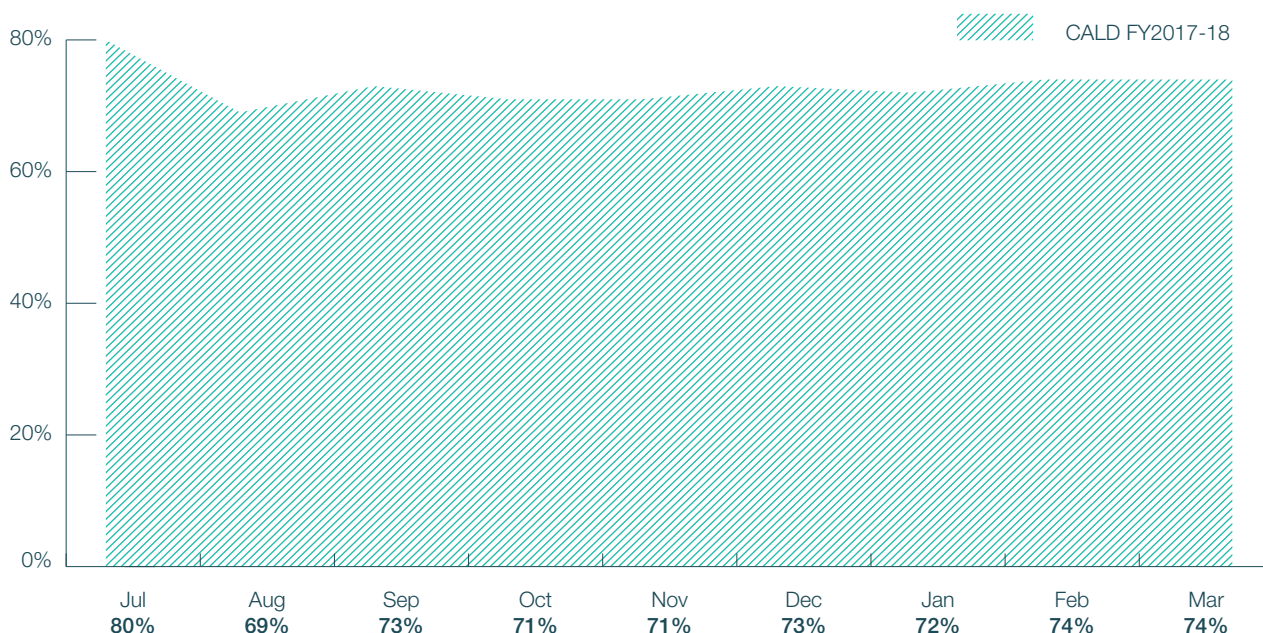
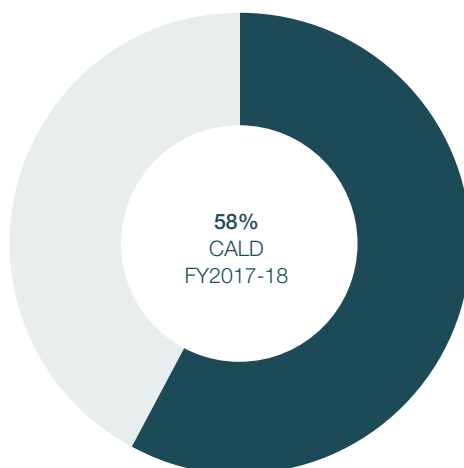


Figure 3.3: SBS main channel prime time (18:00–24:00) CALD FY18 April year-to-date<sup>61</sup>



60 SBS internal analysis against targets for CALD programming

61 SBS internal analysis against targets for CALD programming

## SBS VICELAND

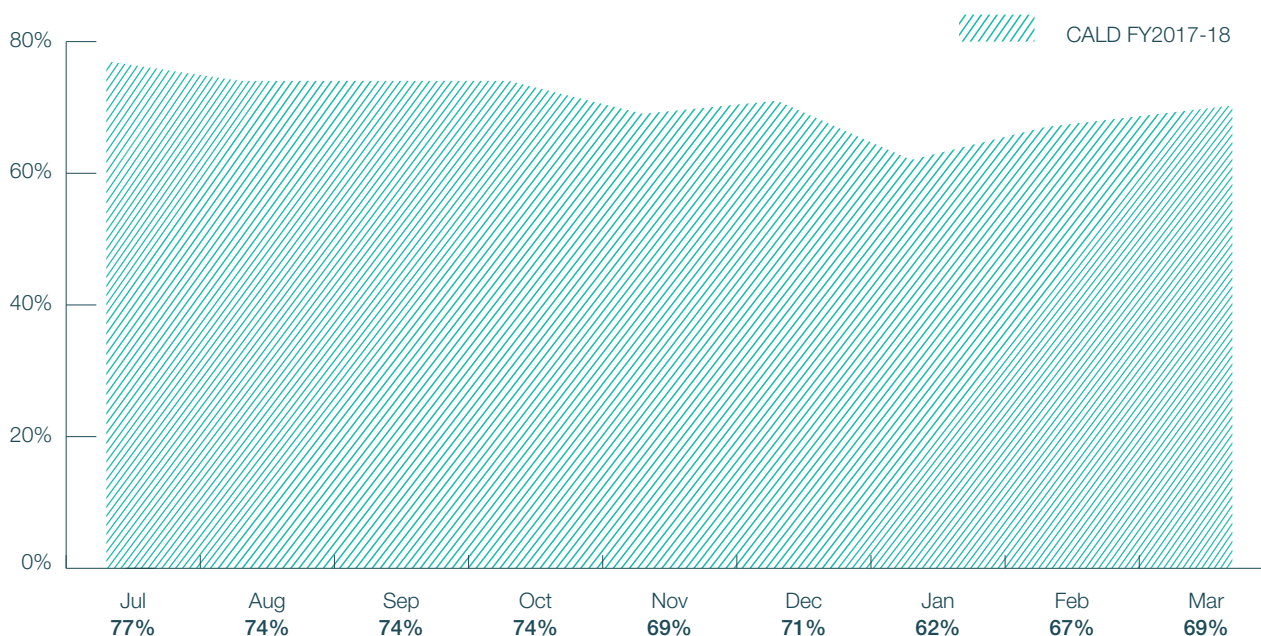
SBS entered a content and brand licensing arrangement with global youth media company VICE in 2016. VICE's catalogue of content affords SBS the opportunity to provide young Australians with global content never before available in Australia on a low-cost model. This is diverse content, with a distinct tone, that helps younger audiences understand the world in which they exist is clearly aligned with SBS's charter objectives. SBS maintains full editorial control of content broadcast. Of first-run content broadcast on SBS VICELAND, VICE original content accounts for approximately 28 per cent, of which 71 per cent is CALD. SBS VICELAND has a market share of 1.2 per cent, April year-to-date.

In 2017–18, SBS VICELAND is averaging 71 per cent CALD each month in total hours and 40 per cent CALD in prime time (18:00-24:00) on a monthly basis. Key program themes include cultural exploration and integration, news and current affairs as well as LOTE programming. Where programs are not CALD they are successfully attracting younger audiences to SBS VICELAND to engage with other SBS content on that channel and across the network.

"It [SBS VICELAND] just has a different type of programming, not run of the mill or duplicate like some of the other channels."... "It has such a broad range of shows and news segments."

Source: SBS audience survey feedback, 2018

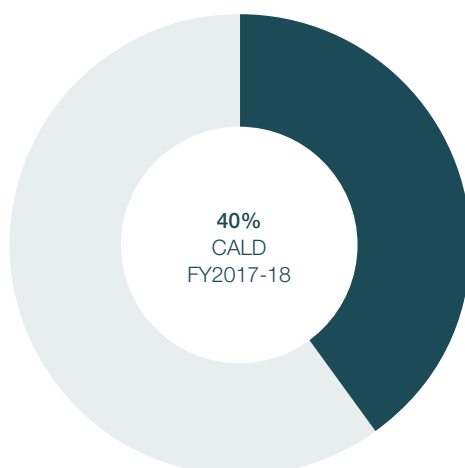
Figure 3.4: SBS VICELAND CALD (24 hours) FY18 April year-to-date<sup>62</sup>



62 SBS internal analysis against targets for CALD programming

### 3 SBS is a niche operator with distinctive services (cont)

Figure 3.5: SBS VICELAND CALD prime time (1800–2400) FY18 April year-to-date<sup>63</sup>



SBS VICELAND has contributed to stronger audience perceptions of SBS’s distinctiveness as demonstrated in its brand tracker survey. It is seen as having a different perspective, with content which cannot be found elsewhere, as well as being fun. Feedback to SBS from audiences about SBS VICELAND confirms the channel is perceived by the audiences who are engaging with it as contributing to ensuring a diversity of media in Australia.<sup>64</sup>

#### **NITV**

NITV became part of SBS in 2012 and was launched as the nation’s first dedicated national free-to-air Aboriginal and Torres Strait Islander television channel in December 2012. NITV’s core audience is Aboriginal and Torres Strait Islander peoples and its market share is approximately 0.2 per cent in any age group. By 2026, the Aboriginal and Torres Strait Islander population is projected to reach upwards of 900,000 people.<sup>65</sup> Globally, access to Indigenous media is fundamental to accessing culture through an Indigenous lens. As such, NITV occupies a unique place within the domestic media market through its dedication to Indigenous content.

NITV is working to increase the diversity of Indigenous cultures and perspectives represented on NITV through content source from and produced by First Nations Media Australia (FNMA) members and other Indigenous producers and internationally through World Indigenous Television Broadcasters Network (WITBN).

#### **Programs**

NITV programs share unique stories that inspire, instil pride and lead to a greater understanding of Aboriginal and Torres Strait Islander peoples and culture. At least two key creative roles (writer, director, and producer) for each program commissioned by NITV are Aboriginal or Torres Strait Islander.

There are nine current contracts in place with four community broadcasters to produce and deliver programs for NITV under the regional and remote *Our Stories* initiative; with Goolarri Media through Ramu Productions, Central Australian Aboriginal Media Association (CAAMA), NG Media and the Brisbane Indigenous Media Association.

<sup>63</sup> SBS internal analysis against targets for CALD programming

<sup>64</sup> Clarity Strategic Research, SBS Brandtracker, Wave 12, March/April 2018.

<sup>65</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/products/3E27B260A585DE5DCA257CC900143EF6>

## News and current affairs

With the aim of reaching more Australians and making a greater impact across all platforms, NITV operates its Indigenous News and Current Affairs (INACA) service via a ‘one newsroom,’ with multiplatform Aboriginal and Torres Strait Islander video journalists equipped to deliver across the schedule and online, and across multiple jurisdictions.

## Sport

Sport is a known vehicle to promote reconciliation and shared success for both Aboriginal and Torres Strait Islander and non-Indigenous audiences. NITV promotes healthy heroes and local sports content otherwise not a focus for other broadcasters and commercial media, including providing a different focus for the Australian Football League (AFL) and National Rugby League (NRL).

As well as local level NRL participation and pathways, the annual Koori Knockout is a major community and cultural sporting event broadcast on NITV. NITV partners with and broadcasts AFL second tier leagues and community leagues and has commissioned and acquired documentaries and stories of some of Australia’s most celebrated Aboriginal and Torres Strait Islander sporting names.

## Children’s programming

NITV is placing increasing focus on broadcasting and publishing content that is specifically designed for children and young people, with 53 per cent of the total Aboriginal and Torres Strait Islander population aged under 25 years.<sup>66</sup> It is extremely important for Aboriginal and Torres Strait Islander children and young people to see themselves positively represented on television, radio, digital and social media—to ensure social inclusion and economic participation, and to contribute to early childhood development and a positive sense of identity. Aboriginal and Torres Strait Islander children and young people are otherwise at risk of only being depicted in the media in times of crisis.

SBS Learn has published educational resources linked to NITV content to extend its reach and impact into school classrooms, working alongside other national Aboriginal and Torres Strait Islander organisations.

### **Delivering industry firsts in children’s programming for Indigenous youth**

#### ***Little J & Big Cuz***

An Australian first animation in partnership with the Australian Council for Educational Research (ACER), the Secretariat for Aboriginal and Islander Childcare (SNAICC) and Ned Lander Media, offering a proud and positive view of Indigenous Australia and the opportunities for learning within it to Indigenous children as they prepare for school. *Little J & Big Cuz* was translated into Djambarrpuyngu, Pitjantjatjara, Arrernte, Walmajarri, Yawuru and Palawa kani.

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66 <http://abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20Data%20Summary~10>

### 3 SBS is a niche operator with distinctive services (cont)

#### Food Network

Australian audiences have been coming to SBS for years to discover and explore cultures of the world through the food genre. In reaching a cost-effective content output arrangement with Scripps Networks Interactive in 2015, SBS brought Australians free, unprecedented access to food, cooking and food travel programs handpicked by SBS from around the world alongside locally-made programs (see Case Study on page 28). Food Network's market share April year-to-date is 0.9 per cent.

Food Network allows Australians to explore cultures through different cuisines from around the world and speaks to the inclusive ability of food to bring diverse communities closer together. Further, the arrangement has enabled SBS to repeat previously produced and aired locally made food programs on Food Network. One of the key considerations in launching Food Network was the popularity of SBS's Thursday night food programs on the SBS main channel, the popularity in the subscription television landscape of dedicated food programming and lack of available choice for free-to-air consumers. In fact, one of the guiding principles of Food Network was to address the lack of diversity of food programming available for free, in a commercial market dominated by reality cooking programs.

SBS operates Food Network on a low-cost model, with its modest profit invested in other acquisitions and commissions contributing to CALD content across the network (if not directly to the Food Network channel), which means revenues – not the taxpayer – are funding Food Network.

SBS acquires content from Scripps for the free-to-air channel, but on a high repeat ratio as there is a negligible acquisitions budget for Food Network. There is a deep catalogue of content not acquired by SBS which Scripps can sell to other buyers.

#### Food Network – a global offering of inclusiveness through food

Anthony Bourdain, *No Reservations*

Reza Mohammed, *Spice King of India/Vietnam*

Andrew Zimmern, *Driven by Food* and "*Bizarre Foods*"

Ching He Huang, *Ching's Amazing Asia*

Patti Junich, *Patti's Mexican Table*

Poh Ling Yeow series

Kylie Kwong series

Luke Nguyen Series

Adam Liaw series

Roger Mooking series

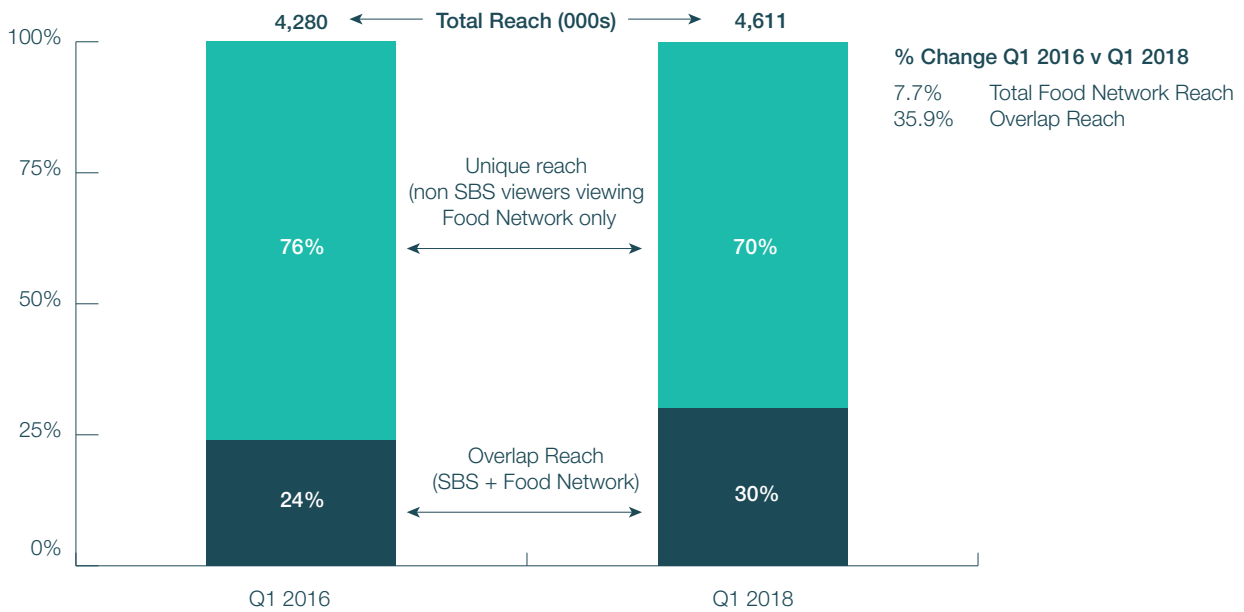
Gary Mehigan's, *Far Flung*

Sarah Todd, *My Indian Restaurant*

Anjum Amanda, *Australian Spice Stories*

Andy Bates, *Street Food*

**Figure 3.6: SBS Food Network Average Monthly 5-minute Reach (Total Individuals) January-March 2016 to January-March 2018<sup>67</sup>**



As Figure 3.6 demonstrates, in addition to its function of entertaining and informing Australians about global cuisine and culture, Food Network provides a unique opportunity for SBS to engage new audiences with other distinctive SBS programs. As at March 2018, there is a 30 per cent overlap in audiences watching the SBS main channel and Food Network. This overlap is a direct result of a concerted strategy by SBS to promote Australian commissioned and news and current affairs programs to Food Network audiences. For example, a viewer tuning in to *Ching's Amazing Asia* on the Food Network will see a promotion for *Insight*, or *Marry Me, Marry My Family* on the SBS main channel, and subsequently tune in to watch. SBS data demonstrates that this strategy is exposing more Australians to its distinctive CALD content provided across the breadth of the network.

Therefore, not only is Food Network generating revenue to allow SBS to invest in more distinctive Australian content, it is serving as a shopfront for audiences to experience the broader SBS offering through effective engagement in cross-promotion to raise awareness of SBS content.

<sup>67</sup> OzTAM Metro & RegTAM Regional FTA Database; 5 City Metro + Combined Regional Aggregated Markets Including WA; SBS + SBS Food Network, 5+ minute minimum consecutive Reach, Jan 2016-Mar 2018, Total Individuals, Sun-Sat 0200-2559, Consolidated 7 01/01/2016-26/12/2015, Consolidated 28 27/12/2015 onwards.

# 3 SBS is a niche operator with distinctive services (cont)

## **SBS Radio**

SBS has provided in-language radio, online and digital programs and services to Australia's LOTE speaking community since its inception. Today, nearly five million people in Australia speak a LOTE at home.

In 2012, SBS committed to revising its radio schedule at each subsequent Australian Census, to ensure the scheduling of languages reflects the changing face of Australia. Two major schedule changes have since been made based on a clear formula (subject to public consultation) that considers factors such as population of language group, English-language proficiency, recentness of arrival, age and household resources as well as evidence of discrimination or vilification of a particular group in Australia. In each of 2013 and 2017, new languages were added and all LOTE audio content is available digitally via on-demand audio podcasts. Both review processes have involved extensive community consultation by SBS.

### Working alongside other radio providers

SBS radio has a national focus, distinct from community radio. Where community radio stations are the best-placed to explore local issues and perspectives within communities in LOTE, SBS Radio must adopt a national perspective for its audiences, exploring and interpreting the major national stories and issues for the 68 language communities to enable them to better participate in Australian life. SBS Radio covers important stories from different states and territories but is unable to provide the localism offered by a community station which is servicing a finite geographic area within a city or regional town. The complementary nature of the SBS Radio function and community broadcasting ensures that migrants who don't speak English are able to access both local (community radio) and national news and information (on SBS).

In development of its new radio schedule, SBS invited submissions from all stakeholders, including the National Ethnic and Multicultural Broadcasters' Council (NEMBC) and ensured that where applicable, SBS in language sites for radio programs decreasing in hours or being removed from the schedule, directly referred audiences to the relevant community radio station where they could continue to hear local news and information in LOTE.

Similarly, there are distinct differences between SBS Radio and the role of ABC Radio which provides a network of regional and suburban stations that explore local issues in English. Whilst SBS Radio sometimes broadcasts in English, its purpose is to extend on the obligations of the SBS Charter with a unique interpretation and exploration of news for Australia's diverse multicultural communities.

## **SBS On Demand**

SBS's streaming service was among the first in the domestic market, launched over seven years ago. SBS On Demand allows SBS to deliver on its Charter requirements in a digital environment by connecting Australians to new perspectives via CALD global content, whilst providing SBS CALD and LOTE programs to audiences on their device of choice.

Digital services have been mandated under the SBS Charter since 2013. To ensure the expectations of SBS audiences are met in the streaming environment, SBS invests in diverse programming that provides Australian audiences with access to a distinctive offering. SBS takes account of the absence of diversity of content available via other domestic streaming providers by focusing its streaming services on CALD and LOTE content. As with the SBS main channel, where content is not CALD or LOTE, it plays a critical and successful role in engaging audiences with SBS On Demand which enables SBS to promote the breadth of its offering across channels and platforms, specifically CALD and LOTE programs.



On SBS On Demand, CALD titles accounted for 71 per cent of all in licence titles in April 2018.

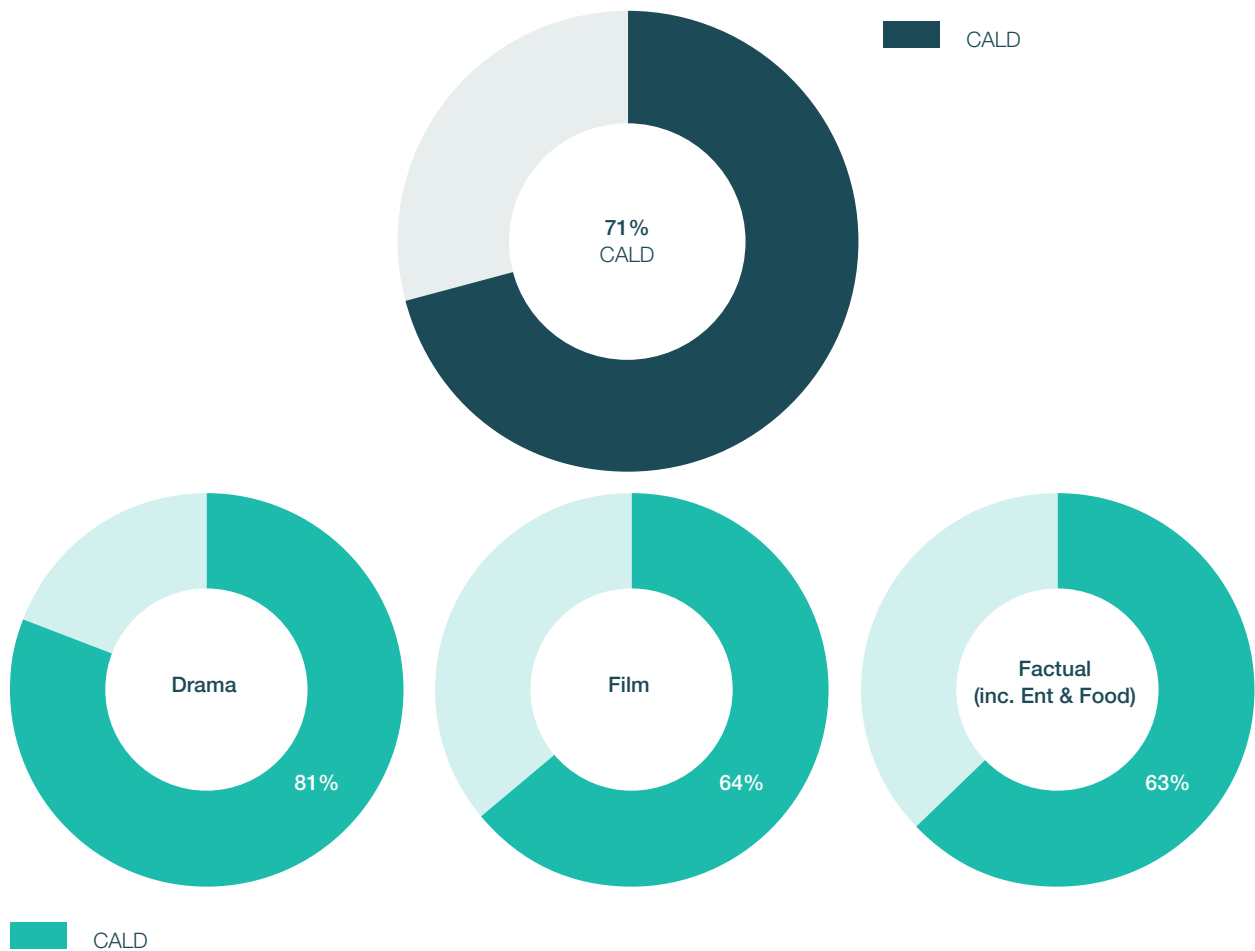
**81 per cent of drama on SBS On Demand is in CALD and 75 per cent is LOTE**

SBS is achieving a target to maintain LOTE drama on SBS On Demand at 75 per cent annually.

The relatively low proportion of drama hours in English on the SBS On Demand platform (less than 25 per cent) demonstrates that the number of instances where SBS will compete with other providers for English language drama is very low, given this differentiation. However, it is an essential part of SBS’s content offering to bring Australian audiences quality drama series that speak to the SBS purpose and to engage more Australians with the broader network offering.

The SBS On Demand streaming service is ensuring a diverse offering in the digital streaming environment for Australian audiences, given the lack of commercial incentive on the part of commercial providers to provide the majority of the content which features on SBS On Demand as demonstrated in Figure 3.7 below.

Figure 3.7: SBS On Demand – CALD by genre – April year-to-date FY18<sup>68</sup>



68 SBS internal analysis against targets for CALD programming

## 3 SBS is a niche operator with distinctive services (cont)

With anytime, anywhere viewing effectively now a consumer expectation, it is essential that the integrity of the SBS audience experience, in the linear television and radio platforms is consistent with their experience in accessing distinctive, alternative content online or via digital services. Access to a quality digital offering should not be confined to a homogenous commercial offering when the multicultural make-up of Australia so explicitly indicates there is a market need to provide diverse and distinctive media in the online and streaming environment.

### **Taking guidance from SBS audiences**

Community consultation is part of the very fabric of SBS's operating model to a far greater extent than its commercial counterparts. In making decisions on content priorities and the delivery of the Charter, SBS engages with audiences and communities in a number of different ways.

#### *Community Advisory Committee*

The SBS Community Advisory Committee (CAC) comprises prominent community and business figures from across Australia who discuss issues of relevance to SBS and provides advice, raises community concerns and provides feedback on programming and impact projects to the SBS Board. The SBS CAC engage with and discuss the needs, interests and concerns of communities across a variety of social and cultural issues. The CAC is appointed by the SBS Board and operate in accordance with section 50 of the SBS Act.

#### *Community Engagement*

SBS aims to inspire all communities and connect with stakeholders across the country by contributing to social cohesion and impact projects.

SBS is committed to engaging with Australia's CALD communities and creating awareness of SBS's multilingual, multicultural radio, television and digital media services. It is vital to connect with stakeholders across the country to extend the reach and value of all SBS content, and to educate and entertain all Australians.

Community engagement extends across all language programs – from SBS Radio broadcasters attending events, conducting outside broadcasts at festivals and hosting language specific community forums. All community engagement aims to deliver memorable experiences and to provide content for the relevant language programs.

To build reach and impact of SBS programs and services, SBS holds forums across the country as part of its 'Inspiring Communities' program. These events provide valuable opportunities for SBS to hear from and engage with stakeholders representing CALD communities, Indigenous, industry and state government, and develop new opportunities for collaboration.

In addition to these measures, SBS also maintains ongoing engagement with key organisations that represent and promote the interests of various communities, including peak bodies.

#### *SBS Brand Tracker*

SBS monitors performance against community expectations to enable the organisation to gain a big picture view on media consumption and to explore perceptions of the SBS network as a whole and of each specific channel and/or platform. It also enables SBS to gain a better understanding of external factors it needs to take into account in ensuring distinctiveness of its content compared to other media providers.

SBS uses this research to better understand the appeal and engagement of different types of content to inform delivery of alternative content across different platforms. It also helps inform SBS about the big social issues that are important to audiences across Australia to inform its content strategy and ensure its alignment to community expectations and Charter requirements.

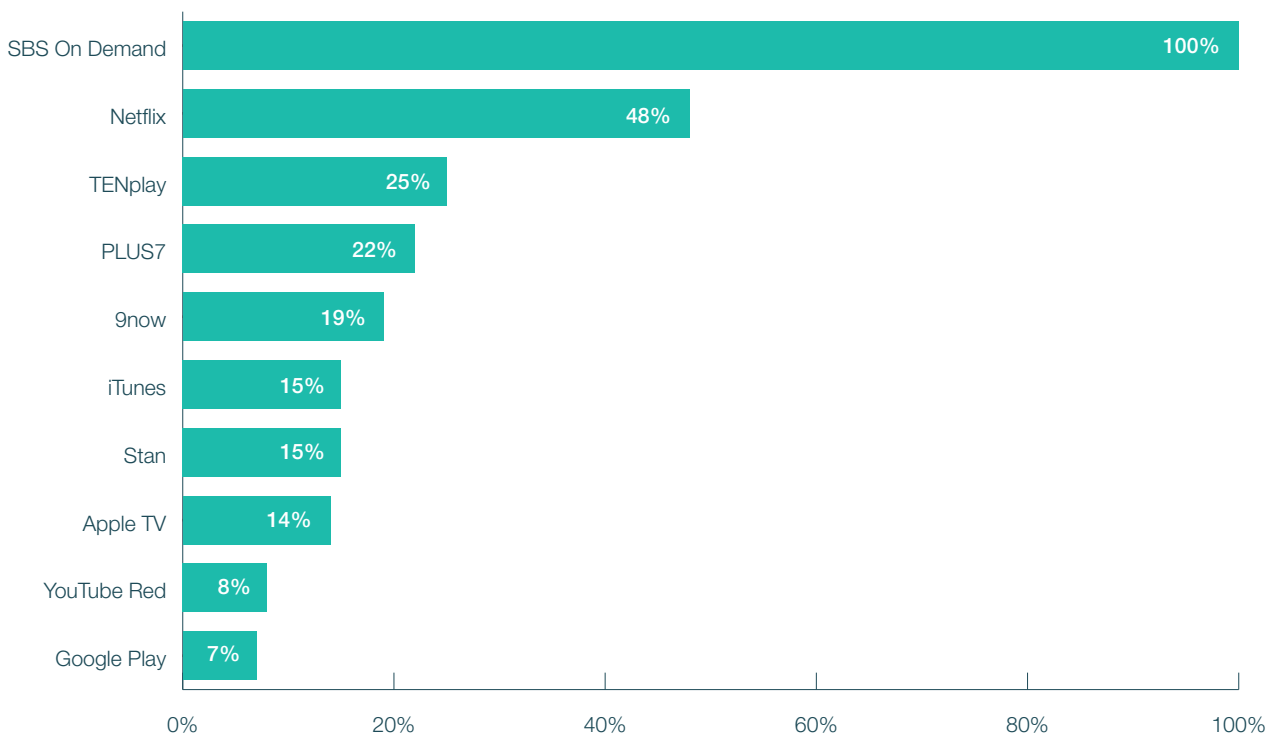
### The Exchange

The Exchange is an online panel made up of SBS viewers with whom SBS engages with to learn and take feedback about how it is delivering on its Charter requirements. The Exchange is an important tool for SBS in ensuring it is meeting community expectations for programs which reflect and promote Australia’s multicultural society, are distinctive and different from other available media, informative, entertaining, are relevant and contributing to the overall diversity of Australian television. It’s also important in aiding SBS to monitor the distinctiveness of its services based on audience engagement with SBS versus other media providers.

Since 2017, SBS has sought feedback from *The Exchange* about 25 programs which aired across its channels and platforms in order to assess audiences’ perceptions. Programs like SBS’s Mardi Gras coverage and *Eurovision* broadcasts, *The Family Law*, *The Mosque Next Door*, *Marry Me Marry My Family*, *Safe Harbour*, a dedicated week of programming focused on race and an extensive range of SBS food commissions received the strongest endorsement from SBS audiences for their alignment to the SBS Charter and in meeting audience expectations that SBS delivers a distinctive and different offering from its commercial counterparts and the ABC.

These panels also provide SBS with information on how users view SBS services relative to other offerings in the market as show in Figure 3.8 below.

**Figure 3.8: The Exchange SBS On Demand – reported monthly streaming of those who engage with SBS On Demand monthly<sup>69</sup>**



69 The Exchange, Profiling Questionnaire – Restage 2017 05/08/17 till 03/05/18; “Do you watch content on any of the following on-demand or catch-up services on an average month?” Base: All respondents; n=4,728

## 3 SBS is a niche operator with distinctive services (cont)

*Of SBS On Demand users surveyed via The Exchange*

- 48 per cent of audiences who watched SBS On Demand in an average month also claimed accessing content on Netflix in an average month.
- Of the same users, only 15 per cent said they accessed content on Stan and iTunes suggesting there is little audience overlap between audiences accessing SBS On Demand content regularly and other providers.
- The audience for SBS On Demand is a different cohort of audiences to those watching for example, Stan and 9now so SBS is largely not competing with the audiences of these services.
- The far greater audience overlap for SBS is Netflix, which distinct from other domestic streaming services also features a big catalogue of arthouse movies and documentaries.<sup>70</sup>

### 3.2 SBS is a niche market operator

Issues Paper questions in consideration:

#### **Question 7**

Noting that unlike the ABC, the SBS does not have a requirement to take account of the “broadcasting services provided by the commercial broadcasters” and that the SBS has the ability to seek advertising to partially fund its activities, how does the SBS approach the broad issues of competitive neutrality in relation to commercial players?

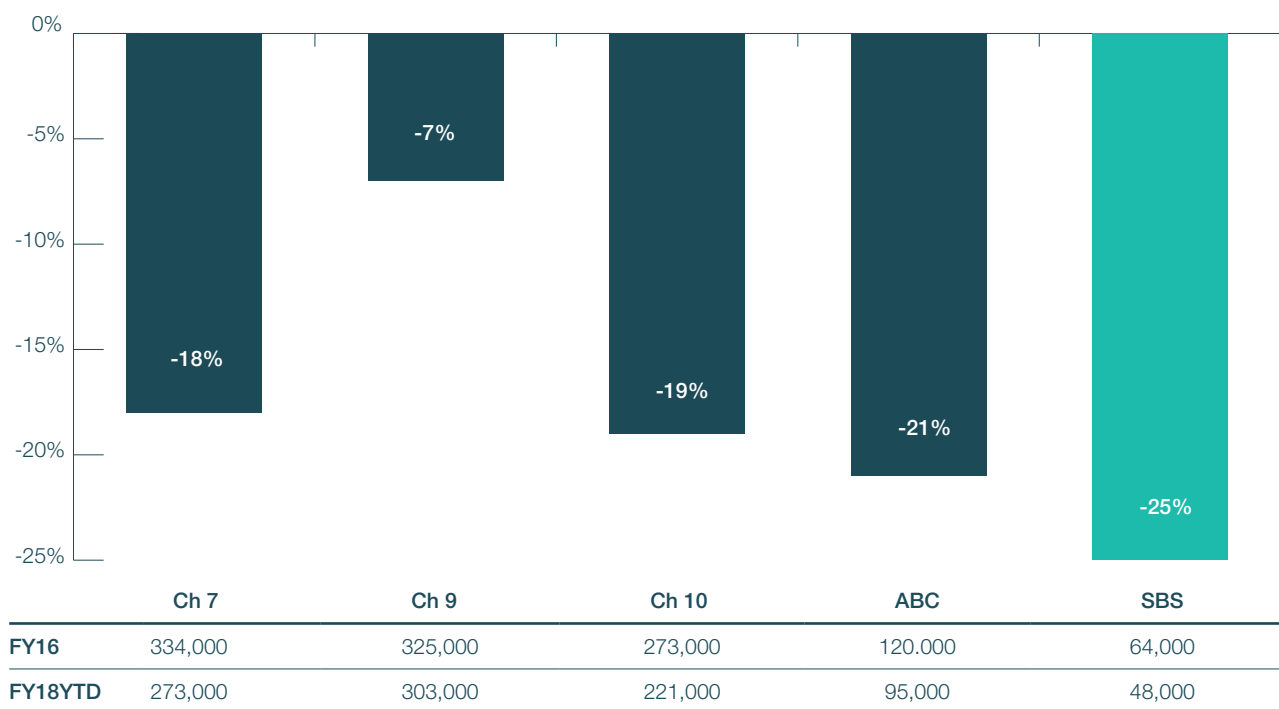
#### **Question 8**

Considering the commercial activities of the national broadcasters (e.g. where they are selling or purchasing goods and services), is there evidence that they have taken undue advantage of their government ownership, to the detriment of competitive outcomes?

The SBS Charter drives SBS’s differentiation in a fragmented market and empowers it to pursue public interest objectives, but constrains SBS’s ability to compete. Whilst SBS audience declines in recent years are broadly aligned with those experienced by the market as a whole, the network has experienced significant declines in the key 25–54 demographic over the past two years. This is a reflection of the increased competitive pressures on SBS, the niche proposition of its services and constraints on its capacity to compete for advertising revenue. It also indicates the extent to which consumer preferences are changing. Specifically, it demonstrates the entry of international behemoths which is significantly changing the competitive landscape.

<sup>70</sup> The Exchange, Profiling Questionnaire – Restage 2017 05/08/17 till 03/05/18; “Do you watch content on any of the following on-demand or catch-up services on an average month?” Base: All respondents; n=4,728

Figure 3.9: Decline in 25–54 Average Audience (Metro) of primary channel for each network since FY2016<sup>71</sup>



Over the past five years, SBS television has shown resilience in a declining market, capturing underlying population growth, particularly in the 65+ demographic. As a result SBS’s audience is ageing at a rate far faster than the rest of the free-to-air television sector. SBS experienced the strongest audience declines for 25-54 audiences over the last two years, retaining only 75 per cent of its 25-54 audience in 2015-16.

### Content Budgets

SBS is the smallest of television operator in Australia and also needs to balance the obligations and limitations of the SBS Charter with the requirement to attract advertising revenue to support operations. As such, SBS occupies a challenging place within the Australian media market. SBS typically accounts for five per cent of total investment in commissioned and acquired content across the Australian free-to-air television sector. This significantly constrains SBS’s capacity to compete.

71 OzTAM FTA Database, ABC + Seven + Nine + TEN + SBS, 1800-2229, Average Audiences, 01/07/2015-06/06/2018, People 25-54, Consolidated 28 until 27/12/2015-09/05/2018, Consolidated 7 01/07/2015-26/12/2015 + 10/05/2018-30/05/2018, Overnight 31/05/2018-06/06/2018.

### 3 SBS is a niche operator with distinctive services (cont)

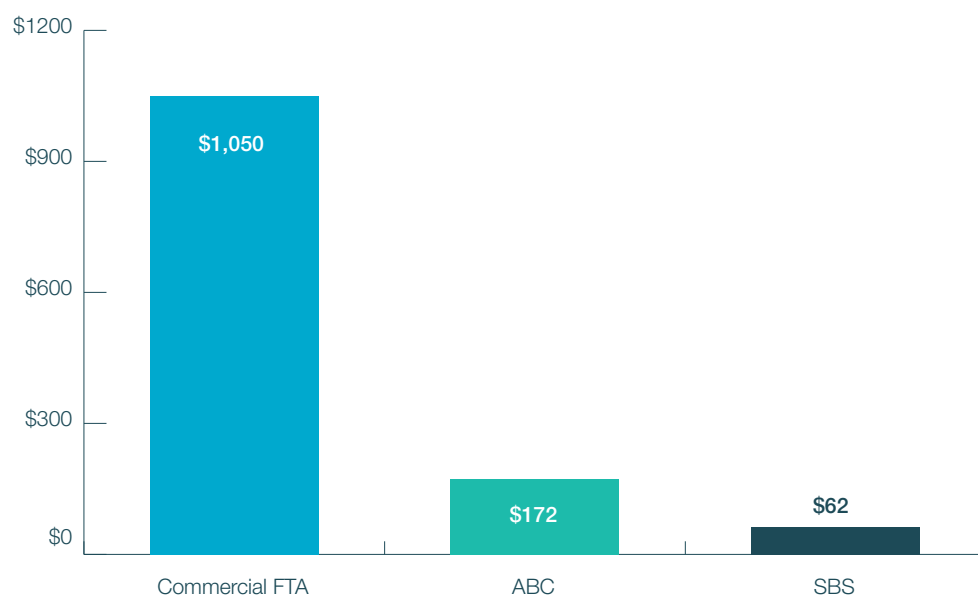
Figure 3.10: Percentage share of annual expenditure on content<sup>72</sup>

Network	Seven	Nine	Ten	ABC	SBS
Expenditure		81%		14%	5%
Share of audience*	30%	28%	17.5%	17%	7.5%

Outside of News and Current Affairs and Sport, SBS directs approximately \$62 million toward content activities across the SBS main channel, SBS VICELAND, NITV and SBS On Demand.

In contrast, each commercial free-to-air operator invests approximately six times the funding towards content than SBS and SBS has one third of the funding available for content than the ABC. In addition to the free-to-air sector, Foxtel reportedly invests more than \$100 million a year out of its total content spend of \$1.6 billion on local productions.<sup>73</sup>

Figure 3.11: Estimated Annual Content Expenditure by millions (excluding news and sport)<sup>74</sup>



72 Expenditure data based on Australian Communications and Media Authority, Broadcasting Financial Results 2015–16 September 2017 (<https://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcastingfinancial-results-report>), Senate Standing Committee on Environment and Communications Answers to Senate Estimates Questions on Notice May 2017 (No. 144-145 Communications Portfolio, Australian Broadcasting Corporation) and SBS Internal Analysis. Share of audience data based on OzTAM 5 City Metro, FTA Network Share, Sun-Sat 1800-2400, 01/07/2017-14/05/2018, Total Individuals, Consolidated 28 until 16/04/2018, Consolidated 7 17/04/2018-07/05/2018, Overnight 08/05/2018-14/05/2018.

73 <https://www.if.com.au/foxtel-takes-the-fight-up-to-netflix-and-stan/>

74 Expenditure data based on Australian Communications and Media Authority, Broadcasting Financial Results 2015–16 September 2017 (<https://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcastingfinancial-results-report>), Senate Standing Committee on Environment and Communications Answers to Senate Estimates Questions on Notice May 2017 (No. 144-145 Communications Portfolio, Australian Broadcasting Corporation) and SBS Internal Analysis.

### SBS's content investment skews strongly to documentaries

On average, 58 per cent of the \$1.1 billion commercial free-to-air network investment is on Australian content, excluding news and sport. Local light entertainment accounts for 43 per cent of spend whilst adult drama and documentaries are 11 per cent and one per cent of spend respectively.

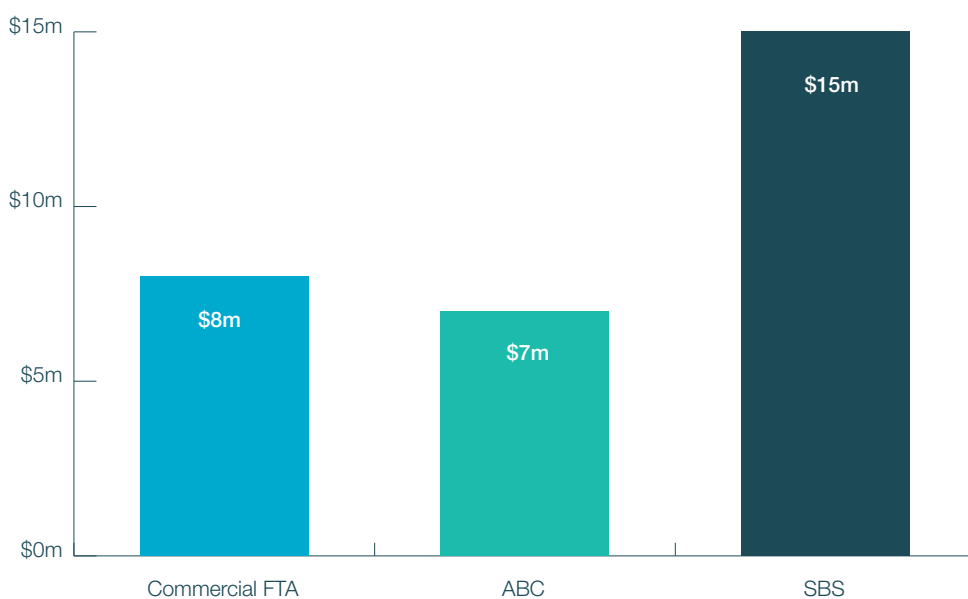
As Figure 3.12 below shows, in contrast, 58 per cent of SBS's content investment on the main channel, which is where the bulk of all content budgets are invested, is on first-run commissioned hours. SBS's point of difference is that **65 per cent of its expenditure is on Australian documentaries** and food commissions, with 23 per cent on Australian drama and just eight per cent on light entertainment.

Nine Entertainment Co (the Nine Network) has signed a new five year rights deal worth \$300 million to broadcast the Australian Open.

Each year the two week broadcast equates to approximately \$60 million, which is SBS's entire annual content budgets for commissions and acquisitions across all of its channels and platforms.

Source: <https://www.tennis.com.au/news/2018/03/29/tennis-australia-signs-landmark-rights-deal-with-nine-network>

Figure 3.12: Estimated annual content expenditure on documentary by network (\$m)<sup>75</sup>



<sup>75</sup> The \$15 million in expenditure includes SBS documentary and food programming. Expenditure data based on Australian Communications and Media Authority, Broadcasting Financial Results 2015–16 September 2017 (<https://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcastingfinancial-results-report>), Senate Standing Committee on Environment and Communications Answers to Senate Estimates Questions on Notice May 2017 (No. 144-145 Communications Portfolio, Australian Broadcasting Corporation) and SBS Internal Analysis.

### 3 SBS is a niche operator with distinctive services (cont)

#### Programming constraints

With small budgets for content SBS must be highly tactical in maximising the value of its investments in a cluttered marketplace and is significantly constrained in its programming strategy. Greater funding enables SBS's commercial counterparts to offer far greater schedule consistency, for example:

- Shows like Network Ten's *Masterchef* is in its 10th season, providing around 63 episodes of secure, familiar content annually. Other commercial networks have similar large-scale returning franchise offerings;
- SBS is at a significant structural disadvantage as it does not have the editorial freedom or funding to buy big branded formats like its commercial counterparts to maintain schedule consistency. As such SBS doesn't have the ability to monetise franchises;
- Outside of *Eurovision*, the *Tour de France* and the *World Cup* every four years, SBS does not have big flagship events through the year. This means that it must deal with a fragmented supply market which increases the cost of doing business, on small budgets; and
- A lack of consistency of titles, unlike commercial operators, means it is difficult for SBS to create awareness of content in a cluttered market and to therefore establish and then entrench viewing habits.

#### Case Study: Audiences are at the hart of SBS's strategies, The Ghan, 2018

*The Ghan*: Australia's Greatest Train Journey was an Australian-first foray into the 'Slow TV' movement. It was originally screened over three hours with **no advertising breaks**, taking the viewer on a journey aboard Australia's most iconic passenger train voyage from Adelaide to Darwin. *The Ghan* achieved SBS's highest ratings to date for the year at the time of broadcast. The SBS Sales team forewent significant revenue opportunities in *The Ghan* in the interests of putting the experience of the audience first in SBS's first Australian foray into Slow TV.

SBS's competitive disadvantages are clearly evidenced by ratings. Whilst SBS maintains a steady overall audience reach across its channels and platforms, it rarely makes the top 20 programs or even 50 programs watched in any month or year.

The top three SBS programs over the last 12 months year-to-date to May were *The Ghan* (742,000), *The Handmaids Tale* Series two episode one (898,000) and *Who Do You Think You Are* (739,000). However, none of these programs ranked in the top 50 programs on any free-to-air channel during their month of broadcast. In April *The Handmaid's Tale* ranked 78th in that month. In January *The Ghan* ranked 124th nationally in that month and in April again, *Who Do You Think You Are* ranked 94th nationally.<sup>76</sup>

SBS's ratings performance clearly inhibits audience and advertising competition with its commercial counterparts and therefore SBS has a very limited ability to influence competitive market outcomes.

<sup>76</sup> OzTAM + RegTAM FTA Database, SBS + All FTA Networks, 01/01/2018-31/05/2018, Sun-Sat 0200-0200, *The Ghan* – 1st Leg + *The Handmaid's Tale* S2 Ep1 + *Who Do You Think You Are?* S9 Ep 2, Combined Average Audiences, Total Individuals, Consolidated 28.













## Scheduling

Because of SBS's small budgets and the need to sustain first-run content across its portfolio of channels, SBS must compile a cohesive programming strategy from disparate content suppliers to a greater degree than other media content providers in Australia.

SBS is not a large enough player to influence international market trends, but must respond to changes in the commercial market. A significant factor influencing scheduling of SBS content is the need to avoid coinciding with flagship programs on other networks, including:

- New and returning, high-profile commissions such as *The Voice*, *MKR*, *Masterchef*, *Married at First Sight*, *800 Words*, *Doctor Doctor* and *Q&A*;
- Regularly scheduled early evening programs, such as network news, *Home & Away* and *The Project*; and
- Major sporting events such as the *AFL*, *NRL*, *Australian Open*, *Olympics* and the *Commonwealth Games*.

The comparative content focus differences between the primary channels of the free-to-air broadcasters are just as stark when excluding news and sport. For example, when looking at the new and returning series between July-December 2018, differences in local commissioning strategies are clear. Small hours of distinctive content provided by SBS compete against wall-to-wall reality franchises which are highly attractive to advertisers and popular with audiences.

	<b>Dance Boss</b> (10hrs) Seven	<b>Bachelor</b> (20hrs) Ten	<b>The Block</b> (65hrs) Nine	<b>The Weekly</b> (10hrs) ABC	<b>Dead Lucky</b> (48hrs) SBS
Q1 FY19					
Q2 FY19	<b>Instant Hotel</b> (15hrs) Seven	<b>Bachelorette</b> (15hrs) Ten	<b>Family Food Fight</b> (22hrs) Nine	<b>Rake</b> (8hrs) ABC	<b>Filthy Rich &amp; Homeless</b> (3hrs) SBS
					

### 3 SBS is a niche operator with distinctive services (cont)

Figure 3:13: Estimates of new and returning commissioned hours, excluding news and sport in 2018<sup>77</sup>

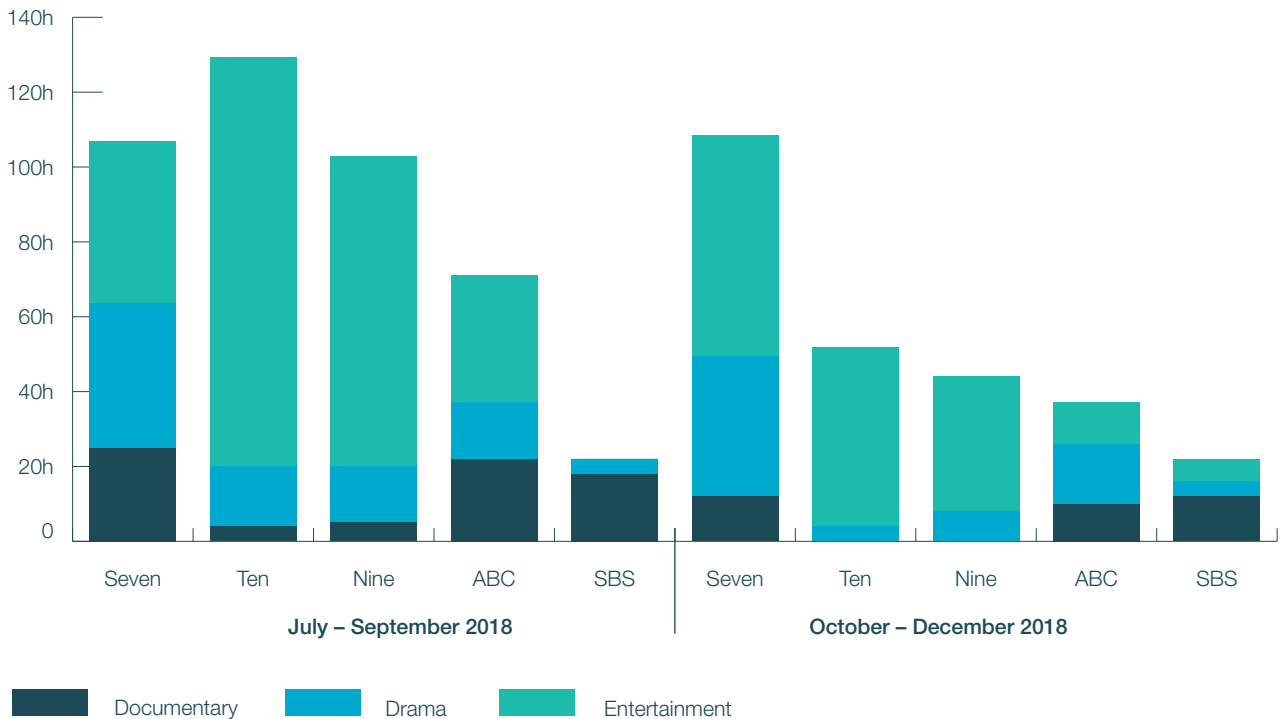


Figure 3.13 provides a snapshot of estimated new and returning commissioned hours for content across the free-to-air networks this year. It demonstrates how little SBS is able to invest comparative to its commercial counterparts. This in turn has a material impact on SBS’s ability to attract consistent levels of audience and revenue, because these major, repeat formats are where commercial networks are able to best earn their revenue.

#### Securing distinctive content

It is impossible for SBS to deliver on one of its core mandates to connect with mainstream multicultural Australia on television or online, without the acquiring a diverse mix of genres and titles from around the world, which the SBS Act (section 44(a)) explicitly requires SBS to do. Given the nature of the market and cost of programs, this means competing with other media providers for programs from time-to-time, but in most cases means SBS acquires alternative programs that other media operators do not want. As the Terms of Reference for the Inquiry note – the principles of competitive neutrality do not preclude such competition and moreover, the SBS Act permits SBS to compete.

There are several factors influencing SBS’s competitive capacity to secure distinctive content:

- With limited funding to invest in Australian content, SBS must achieve a balance between commissioned and acquired content to fulfil its Charter objectives. Australian content is significantly more expensive to make and acquisitions are therefore critical in achieving relevance, appeal and cohesion on all channels and platforms.
- SBS is committed to purchasing distinctive titles which deliver on its Charter obligations, and searching for distinctiveness narrows the field of options. It also means SBS must conduct its search from many disparate suppliers which places pressures on the cost of doing business.

<sup>77</sup> SBS estimates incorporating programming announcements from the 2018 upfronts and subsequent reporting with hours based on previous series and/or like for like programming

- The acquisitions market is highly volatile and this makes the delivery of a consistent and yet consistently diverse offering for Australian audiences difficult.
- Given its budgets, SBS must be far more judicious about the timing of decisions it makes. Content has a propensity to increase in cost through negotiation processes (for example – acquiring content at the “off script” stage will often be cheaper).
- Providers such as Netflix are helping to broaden the availability of diverse content for Australian audiences; which is good for consumer choice, but also reinforces the need for SBS to secure distinctive content that provides audiences with alternative content themes.

### *Acquisitions approach*

SBS has become accustomed to carefully balancing content investments to maximise their value to the Australian community, whilst being agile and innovative in responding to opportunities. This capacity to be responsive to international content trends is not unique to SBS. The same opportunities exist for all media operators.

SBS will sometimes attempt to buy programming still in development stage because it is cheaper to buy earlier in the cycle. Prices become higher as information such as cast, pilots and performance in other jurisdictions becomes available. But the reason that SBS must sometimes seek out programs still in development is to try to secure content that will attract audiences in a market dominated by popular reality and format television. Taking risks with acquisitions provides SBS with a potential and slight opportunity to secure a breakout show. However, it also places immense pressure on individual title acquisitions, given how small SBS’s acquisitions budget is.

Further, if SBS were not able to secure programs that are of interest to audiences, it would exist only as a network of last resort, or a market failure operator. If SBS were cast as a market failure operator, this would imply that the only time SBS could bid successfully for programs was where there was no other interested buyer. **This could effectively be considered an anti-siphoning list for international content, which would put SBS at a significant disadvantage behind other market players when trying to secure content.** Such an operating environment is clearly not in the public interest, nor was it the intention of the Parliament when SBS was created.

### *Distinctiveness of acquisitions content*

With varying degrees of success, SBS has long premiered niche, cult series to Australian audiences that typically would not be purchased by commercial operators. Series like *South Park* and *Top Gear UK* were purchased at low episodic costs and became synonymous with SBS in the 2000s, attracting a loyal following of audiences. *Top Gear* was subsequently acquired by Nine Network in 2009 after gaining popularity, which made it too expensive for SBS to retain. This is a clear example of the market operating to exclude SBS when a program develops broad popular appeal and becomes commercially attractive to a better financed competitor. SBS exited a bidding process just last month for an international program it was pursuing because the episodic cost was too high as a result of other market interest.

In some instances, acquired programs have proved popular with Australian audiences, but some programs, like for example *Masters of Sex*, failed to attract strong audience interest, which reflects the level of risk SBS takes in allocating its small acquisitions budgets. SBS does not have the luxury of pulling a program off-air if it isn’t rating (as do the commercial networks), because it does not have the library of new programs or budgets to make alternative scheduling choices.

### 3 SBS is a niche operator with distinctive services (cont)

Likewise, SBS has a track record of willingly acquiring series on a second-window option.<sup>78</sup> For example, SBS audiences were able to watch *The Night Manager* (second-window to Foxtel 12 months after its broadcast and whilst still available for Foxtel download), *Unreal* (second-window after Stan) and *The Fall* (second-window to Foxtel) on SBS On Demand after they had premiered on subscription platforms.

#### *Distributors*

In 2016–17, the SBS main channel, SBS VICELAND, Food Network and NITV collectively broadcast almost 2000 different series including new series launches, second window acquisitions and library titles, both first runs and repeats, from around 500 different distributors. This requires extensive relationship management with suppliers across the world.

SBS's strong relationships with groups of distributors have been built a result of its established practice of bringing international programs to Australia over the past decade which commercial networks would not broadcast. As a result, whilst the market is relatively opaque, the reality is that the group of distributors SBS negotiates with are typically aware of SBS's constraints regarding price. As such, when a new program comes onto the market that might appeal to SBS, if a distributor's expectation is that there is already market interest above SBS's known price range, SBS is not involved in negotiations. Often SBS's perceived price range is a barrier to entry before negotiations even begin. This is a clear indication of SBS's competitive disadvantage.

Similarly, where SBS is pursuing a certain program, often, SBS negotiators will withdraw from negotiations if and when they become aware that there is another larger, interested party as SBS is only able to bid within its price range and limited budget envelope. These commercial realities heavily restrict competition.

#### **International content availability**

According to estimates provided by Television Audience Programme Evaluation (TAPE) there were 4962 new series launches across drama, factual and entertainment genres (excluding returning series) from 48 territories in 2017.<sup>79</sup>

Across the genres, factual titles accounted for 45 per cent, followed by drama at 35 per cent. Together, the US and UK contribute around 17 per cent of this total, with both skewing towards factual, with the US also proportionally very high in drama. The Scandinavian countries of Norway, Denmark and Sweden continued their strong output at six per cent and the larger European cohort of France, Italy, Germany, Spain and Holland also take 17 per cent share.<sup>80</sup>

However, the number of titles in the market exponentially grows when returning series are included. FX Research of the US market shows the number of titles increased from 140 new series to 487 new and returning series in 2017 and continues to rise.<sup>81</sup>

SBS is only able to secure a tiny fraction of available US series (and in no way is able to unfairly compete for international drams from the US or any other market) and as discussed must invest resources in sourcing from disparate distributors in multiple countries to meet obligations to provide diverse content to Australians. With LOTE and CALD dominating the SBS acquisitions approach, SBS is likely to only secure between 1 and 2 per cent of almost 500 new or returning series out of the US each year.

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78 Second-window refers to the broadcast rights available following expiration of first-window broadcast arrangements.

79 Television Audience Programme Estimates, FX Networks Research, May 2018

80 Television Audience Programme Estimates, FX Networks Research, May 2018

81 FX Networks Research, May 2018.

“With US network content declining in its ability to travel, buyers have begun to shift their focus to non-network content – material that might play on Basic/Pay services. Commercial players are looking at content that was previously either never considered, or was the purview of less commercially inclined channels, who buy on based on their own criteria values – such as SBS.”

*TAPE (Television Audience Programme Estimates) May, 2018. Research report into international programming.*

In summary, the comparative size of SBS compared to the commercial networks, the fact that SBS is operating with a different content focus, and evidence that SBS has very limited ability to influence competitive markets each demonstrate the structural disadvantages that prevent SBS from competing unfairly.

### **SBS attracts distinctive video on-demand viewers**

SBS is committed to bringing Australians diverse programs from Australia and across the world in the streaming environment and must look at a range of ways to deliver on this commitment. As at April 2018, there were more than 3.8 million registered SBS On Demand users.

When considering prioritising of its digital investment, SBS recognised that in order to maintain relevance in a rapidly changing media market, particularly given the niche proposition of its services, investing in diverse digital content was critical to its sustainability. After consideration of whether to adopt a Subscription Video on Demand (SVOD) or Advertising Video on Demand (AVOD) model for its streaming service, SBS determined the most appropriate model was an AVOD model to maintain accessibility for audiences. This business model was not uniquely available to SBS. Any of the commercial operators could have elected to follow such a business model in entering the streaming market, noting both models have been adopted by Nine Entertainment Co (Nine Network).

*“We’ve got flexibility now. We’ve got a free-to-air business, we’ve got an AVOD business, we’ve got an SVOD business and no one else has got that in this market.”*

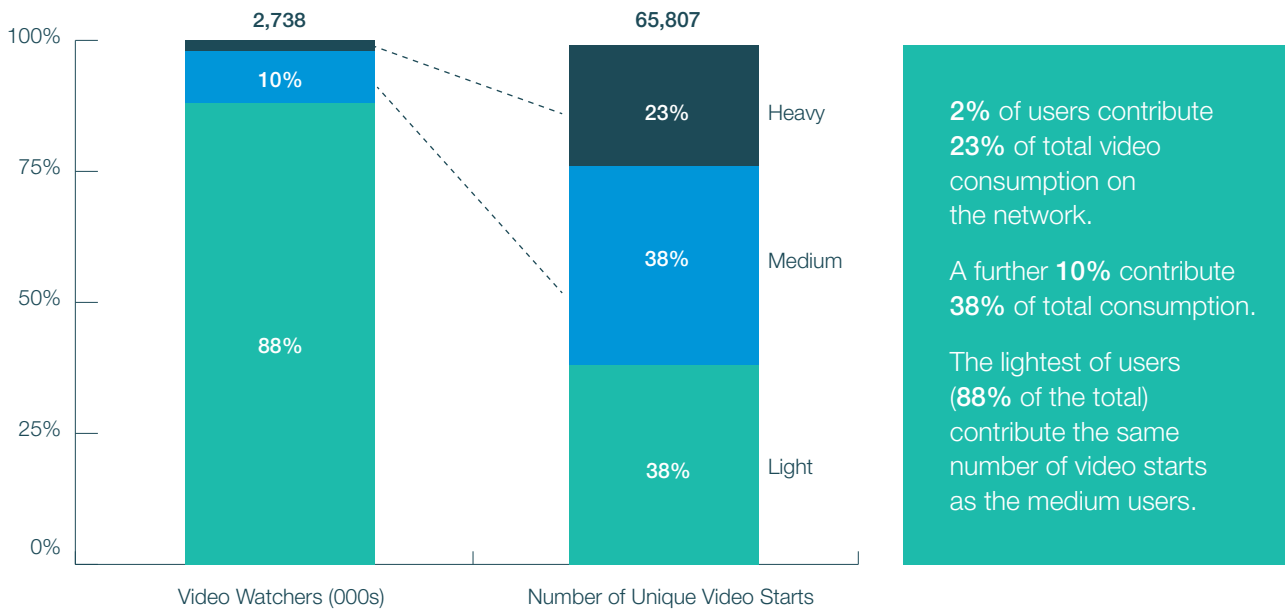
*Nine Network CEO Hugh Marks, September, 2017<sup>82</sup>*

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82 <https://mediaweek.com.au/nine-ceo-hugh-marks-2017-ratings-revenue/>

### 3 SBS is a niche operator with distinctive services (cont)

Figure 3.14 Comparison of video on-demand watchers on the SBS digital network and contribution to overall video consumption<sup>83</sup>



The SBS On Demand service is predominantly used by a small group of regular users. As Figure 3.14 above shows, analysis of video watchers on the SBS On Demand platforms indicates that heavy users (those who engage with SBS content on SBS On Demand two to three times a month) represent a very small percentage of the overall total video consumption market, demonstrating SBS’s limited ability to influence the AVOD market.

#### Case Study – The Handmaid’s Tale

In 2017, SBS acquired *The Handmaid’s Tale*, a US drama set in a bleak dystopian future exploring challenging and extremely confronting themes such as women’s rights, political power and government suppression of diversity and freedom. Many countries around the world are grappling with these issues, as demonstrated by some of SBS’s cross-platform coverage of the key themes within the program.<sup>84</sup>

*The Handmaid’s Tale* is the sort of program not typically seen on a mainstream broadcasting platform and builds on SBS’s reputation with audiences in the niche international drama genre. *The Handmaid’s Tale* became a somewhat surprising international success and afforded SBS a unique opportunity to promote the SBS network offering to new audiences engaging with the series on the SBS On Demand platform. The outcome of a strategy to leverage *The Handmaid’s Tale* to promote other locally-made SBS content was highly successful, noting this is a similar strategy employed for *The Good Fight* to similar levels of success and SBS’s ongoing strategy with Food Network.

<sup>83</sup> SBS analysis of internal data. Data is for the 12-months to May 2018.

<sup>84</sup> See, for example: Four countries that mirror the fictional Gilead: <https://www.sbs.com.au/topics/life/culture/article/2018/04/17/four-countries-mirror-fictional-gilead>

### Case Study – The Handmaid’s Tale (cont)

Analysis of registered SBS On Demand users 5 July 2017 to 10 May 2018 reaffirms the popularity of *The Handmaid’s Tale* (Season 1 and 2 to May 2018), but also points to the success of SBS’s strategy to use the program’s popularity to promote Australian commissioned content and news and current affairs programs to linear television and streaming audiences. Significant numbers of audiences went on to watch programs like SBS commissioned dramas *Sunshine* and *Safe Harbour*, LOTE international dramas *Berlin Station* and *Bad Banks* and episodes of SBS’s long-running and award-winning current affairs program, *Insight*. Twenty-four per cent of those who watched *The Handmaid’s Tale* watched at least one other SBS made program. (see page 82 for Deloitte Access Economics analysis).

That a quarter of audiences who watched *The Handmaid’s Tale* on SBS On Demand also engaged with a program commissioned by SBS or one of its flagships current affairs programs indicates that the strategy of attracting audiences to the SBS network which might not otherwise have engaged with SBS is successful. This thereby enhances SBS’s ability to deliver on one of the central tenants of the SBS Charter, to entertain all Australians and allows it to engage a broader cross-section of the community with other SBS programs. This outcome is in the public’s interest, and contributes to the overall diversity of content audiences can access by virtue of it being provided by SBS.

It is noteworthy that Nine Network programming director Hamish Turner has said of drama like *The Handmaid’s Tale*:

*“Dense, social issues drama doesn’t do so well on free to air ... it’s narrowcasting.”*<sup>85</sup>

It is also noteworthy that Stan just this month announced a multiyear exclusive output deal with MGM (which produced *The Handmaid’s Tale*), to bring all future MGM drama series to audiences in Australia via Stan. This means that Stan will have first purchase options for all future MGM series coming into the Australian market. It is also noteworthy that *The Handmaid’s Tale* is available for purchase to Australian audiences on Apple TV.

### **Constraints on marketing**

SBS is at a significant disadvantage to commercial competitors in promoting its content activities to attract audiences to the network for the following reasons:

- The limitations of SBS’s unique programming model of disparate, short-run programs constrains its ability to effectively market to audiences;
- SBS has limited budgets available for marketing and promotional activities compared to its commercial counterparts;
- At approximately \$4.7 million this year, SBS’s total off-air marketing budgets for 2017-18 is a fraction of the cost of its commercial counterparts. For example, in 2017, Network Ten invested \$1.8 million on marketing activity for *The Bachelor* alone.<sup>86</sup>

85 <https://www.smh.com.au/business/companies/how-13-reasons-why-shows-the-problem-facing-television-20180615-p4zlon.html>

86 SBS Competitive Review, July 2017–December 2017, Zenith Optimedia, presented February 2018



# 3 Application of competitive neutrality to SBS

### Key points

- In order to demonstrate that competitive neutrality principles have been breached, it would be necessary to show that:
  - SBS faces competition in an activity
  - SBS has a net advantage in providing a service as a result of its government ownership
  - Public interest considerations do not outweigh any detriment to competitive neutrality
- It is important that competitive neutrality be considered in the context of how SBS achieves its objectives through a suite of content and platforms. The approach should recognise the interdependencies between content and platforms and audience pathways, rather than focusing on a narrow assessment of individual programs on single platforms.
- On the one hand, SBS has an advantage as a result of its government funding, but other factors (including its requirement to comply with its Act, Charter and the limitations on its advertising) restrict its ability to fully compete in the market.
- Some channels and platforms SBS offers such as Food Network, SBS VICELAND and SBS On Demand are now operating on a commercial basis and covering their avoidable costs without relying on government funding, while others which focus more heavily on CALD and LOTE programming are more reliant on government funding to support their activities.
- In terms of the extent to which SBS serves the public interest, a large proportion of SBS content, such as that provided in LOTE and CALD material, is widely considered to be in the public interest, although it is important that the Inquiry clearly define this term.
- Broader appeal content can directly support the public interest by increasing consumer choice. It can also indirectly support the public interest through providing funding for programs which have less broad appeal, by ensuring cost-efficient delivery of content and allowing cross-promotion of other material (e.g. CALD and LOTE programming) to attract a wider audience and help achieve the objectives of the SBS Charter.
- While SBS's Charter requires it to contribute to the diversity of Australian television services, there are no competitive neutrality requirements for SBS to balance 'competing' in the market and 'complementing' the market.
- Any examination of competitive neutrality should also consider whether there has been a material detriment to competitive outcomes. SBS has a very small share of viewership and advertising revenue, and its ability to influence competitive outcomes is commensurately small given its size.
- Competitive neutrality claims that have been raised about some SBS channels and platforms should be considered in the context of the issues raised above.



### 3.1 Introduction

The focus of the analysis in this Chapter is on:

- the application of competitive neutrality principles to the business activities of SBS (and the appropriate framework to use in making this assessment)
- the cost structures of SBS business activities insofar as they relate to competitive neutrality principles
- the regulatory obligations for SBS insofar as they relate to competitive neutrality principles.

Specifically, this Chapter considers questions 8, 13 and 14 of the Issues Paper, although the broader framework and discussion are also relevant other questions outlined in the Issues Paper.

### 3.2 Background to competitive neutrality in Australia

#### 3.2.1 Principles of competitive neutrality

The notion of competitive neutrality is underpinned by the assumption that, in the absence of market failure, markets operate most efficiently without government intervention. Accordingly, if governments choose to participate in competitive markets, this should be on the same terms as private businesses. If the government is actively intervening in a market to achieve a desired outcome (which the market would not otherwise achieve), this outcome should be in the public interest.

Competitive neutrality policy, therefore, seeks to ensure that government businesses do not enjoy any net competitive advantage as a result of their public sector ownership without a public interest justification.

#### 3.2.2 Competitive neutrality in Australia

Competitive neutrality is not legislated, but the government's approach is a matter of microeconomic reform policy, originally set out in 1995 under the *Competition Principles Agreement* (CPA). The CPA sets out the objective of competitive neutrality policy as "*the elimination of resource allocation distortions arising out of public ownership of entities engaged in significant business activities.*"

Competitive neutrality formed part of the broader push for microeconomic reform in the late 1980s and early 1990s. It first became part of the Australian approach to governance of government entities in 1995, when the Commonwealth, state and territory governments agreed to implement competitive neutrality in the 1995 *Competition Principles Agreement* (CPA). At the Commonwealth level, this was manifested as the 1996 *Competitive Neutrality Policy Statement*.

In 2004, the Australian Treasury published the *Australian Government Competitive Neutrality Guidelines for Managers*. This aims to provide practical guidance to Commonwealth entities about whether competitive neutrality applies to their activity and the adjustments necessary to comply with the principle.

In an effort to continue the process of microeconomic reform, the Commonwealth Government commissioned an independent *Competition Policy Review* led by Professor Ian Harper in 2015. This review considered competition policy in a number of contexts, making suggestions for change across the way governments regulate competition by private and public organisations. The Harper Review recommended that Australian governments should review their competitive neutrality policies and increase the transparency and effectiveness of their relevant processes.

In response to this, the Australian Treasury commenced a review of Competitive Neutrality Policy,<sup>13</sup> reporting on whether the underlying aims of competitive neutrality policy are still being achieved by current policy. Consultation closed in April 2017 however to date no draft or final report had been issued.

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<sup>13</sup> Australian Treasury (2017) *Review of the Commonwealth Government's Competitive Neutrality Policy: Consultation Paper*. Online: [https://consult.treasury.gov.au/market-and-competition-policy-division/competitive-neutrality-review/supporting\\_documents/CN%20Review%20Consultation%20Paper.pdf](https://consult.treasury.gov.au/market-and-competition-policy-division/competitive-neutrality-review/supporting_documents/CN%20Review%20Consultation%20Paper.pdf)

## Excerpt 2: Deloitte Access Economics (cont)

### 3.2.3 Definition and interpretations of competitive neutrality

The CPA defined competitive neutrality in the following terms:

*The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.*<sup>14</sup>

The application of competitive neutrality under this definition is comprised of a number of separate elements:<sup>15</sup>

- The government entity must be engaging in a **business activity**.
  - This requires that there be user-charging for goods or services;
  - There must be an actual or potential competitor; and
  - Managers of the activity must have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.
- The business activity must be **significant**.
  - All Government Business Enterprises, Commonwealth Companies and Business Units are deemed significant for these purposes.

Governments are only required to implement the principles of competitive neutrality to the extent that the **benefits from implementation outweigh the costs**.

Several bodies apply a broad public interest test, considering the public policy objectives of government in balancing whether competitive neutrality applies to an organisation's business activity. For instance, the AGCNCO is required to consider broader 'public interest' issues in evaluating complaints.<sup>16</sup> The same principle is applied by the Victorian Government.<sup>17</sup> This is consistent with the guiding principles outlined in the Issues Paper.

Importantly, the Commonwealth guidance on the subject of competitive neutrality notes that:

*Competitive neutrality does not require governments to restructure the delivery of social programs into competitive market based mechanisms ...*

and, most importantly:

*Competitive neutrality does not imply that government businesses cannot be successful in competition with private businesses. Government businesses can achieve success as a result of their own merits and intrinsic strengths, but not as a consequence of unfair advantages flowing from government ownership.*<sup>18</sup>

This point is similarly made in the excerpt from the Harper Review provided in the Issues paper:

*The principle of competitive neutrality does not extend to competitive advantages arising from factors such as business size, skills, location or customer loyalty... Differences in workforce skills, equipment and managerial competence, which contribute to differing efficiency across organisations, are not the concern of competitive neutrality policy.*<sup>19</sup>

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<sup>14</sup> Competition Principles Agreement 1995 cl 3(1).

<sup>15</sup> Australian Treasury (2017) *Review of the Commonwealth Government's Competitive Neutrality Policy: Consultation Paper*. Online: [https://consult.treasury.gov.au/market-and-competition-policy-division/competitive-neutrality-review/supporting\\_documents/CN%20Review%20Consultation%20Paper.pdf](https://consult.treasury.gov.au/market-and-competition-policy-division/competitive-neutrality-review/supporting_documents/CN%20Review%20Consultation%20Paper.pdf)

<sup>16</sup> *Productivity Commission Act 1998* (Cth) s 21(4) requires the Commission to give particular consideration to the public interest requirements in clause 1 of the CPA.

<sup>17</sup> Victorian Department of Treasury and Finance (2012) *Competitive neutrality policy*. Online: <http://www.dtf.vic.gov.au/files/1bf2df12-3245-4583-af48-a1cd00adff92/CompetitiveNeutralityPolicy-Sep2012.pdf>

<sup>18</sup> *Commonwealth Competitive Neutrality Policy Statement*, June 1996, p. 5.

<sup>19</sup> Issues paper, p. 10.

The only competitive neutrality complaint dealt with to date by the Productivity Commission relating to the public broadcasters was an investigation into the ABC's production facilities.<sup>20</sup> A private television production company made a complaint that because the production facilities were jointly used by government and private clients, they were priced so low that private competitors could not compete. The Productivity Commission concluded that government businesses will be compliant with competitive neutrality principles "if its prices for commercial output exceed the avoidable cost of supplying the service", noting that "the avoidable cost comprises all the costs which the agency would avoid if the service was not provided." We have had regard to this finding in our analysis.<sup>21</sup>

In the UK the Charter Review considered a range of similar issues in relation to the BBC. There are, however, important differences to note between the BBC and SBS's commercial operations.

- Unlike SBS, the BBC cannot engage in commercial activity directly but only through subsidiary companies, and not using government revenue.
- The funding model under which the BBC operates is different to that of SBS. Rather than being funded through general government revenue or commercial advertising, television owners in the United Kingdom pay a "TV licence" fee which funds the BBC.
- The BBC is the largest and most influential player in the UK media market, with 33 per cent of the television audience and 53 per cent of the radio audience. By comparison, SBS has a much less significant role in Australia's media sector.

### 3.2.4 Questions for this review

The focus of the analysis in this chapter is to comment on respond to the following questions on competitive neutrality set out in the Issues paper:

- **Question 7** *Noting that unlike the ABC, the SBS does not have a requirement to take account of the "broadcasting services provided by the commercial broadcasters" and that the SBS has the ability to seek advertising to partially fund its activities, how does the SBS approach the broad issues of competitive neutrality in relation to commercial players?*
- **Question 8:** *Considering the commercial activities of the national broadcasters (e.g. where they are selling or purchasing goods and services), is there evidence that they have taken undue advantage of their government ownership, to the detriment of competitive outcomes?*
- **Question 13:** *From your perspective do the national broadcasters seek a balance between competing in the market and complementing the market? Is that balance the same for traditional broadcasting and for new digital platforms?*
- **Question 14:** *Do you have comments on [the] guiding principles [that the Panel intends to use to guide its analysis]?*

Questions 7 and 8 requires a proper application of competitive neutrality principles to the activities of SBS; this is done in sections 3.4 and 3.5 below.

This section first considers question 14, than addresses Questions 7 and 8 which goes to the heart of the application of competitive neutrality to SBS. It then considers Question 13.

<sup>20</sup> Commonwealth Competitive Neutrality Complaints Office (2000). *Investigation No. 4: ABC Production Facilities*. Online: <http://www.pc.gov.au/inquiries/completed/abc-production/report4.pdf>

<sup>21</sup> *Ibid.*, p. 4

## Excerpt 2: Deloitte Access Economics (cont)

### 3.3 Addressing question 14 in the issues paper: guiding principles

**Question 14: Do you have comments on [the] guiding principles [that the Panel intends to use to guide its analysis]?**

The Issues Paper proposes the following guiding principles for the Inquiry panel to consider in analysing competitive neutrality issues:

- *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.*

These guiding principles broadly help to provide appropriate context on the Australian media environment: namely, that the national broadcasters (including SBS) are funded for public interest purposes, and public interest should consequently be the central focus of any competitive neutrality inquiry.

These principles appear reasonable and provide an appropriate basis for guiding the review.

However it is important to consider in what is meant by the “public interest” in the context of SBS’s services. A starting point is the SBS Charter, which is set out as an expression of Parliamentary intent about the function and purposes of SBS. Furthermore, the Competition Principles Agreement in 1995 envisaged an assessment of a number of public interest factors as follows:<sup>22</sup>

1. *government legislation and policies relating to ecologically sustainable development;*
2. *social welfare and equity considerations, including community service obligations;*
3. *government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;*
4. *economic and regional development, including employment and investment growth;*
5. *the interests of consumers generally or of a class of consumers;*
6. *the competitiveness of Australian businesses; and*
7. *the efficient allocation of resources.*

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<sup>22</sup> Competition Principles Agreement 1995 cl 3(6) cited in Australian Government (2017) *Review of the Commonwealth Government’s Competitive Neutrality Policy Consultation Paper*.

These factors need not be seen as an exhaustive list although many of them can be interpreted relatively broadly. SBS's activities are likely to be relevant to factors 2, 3, 4 and 5.

Public interest element	Application to SBS
<p>2. Social welfare and equity considerations, including community service obligations</p>	<p>The SBS Charter places an obligation on SBS by prescribing the types of content it must show and the types of audience it should seek to serve which is based on increasing the diversity of content and reflecting Australia's multicultural population.</p> <p>There is considerable evidence of the impact SBS has on social welfare and equity considerations, particularly by promoting cultural diversity and multiculturalism. Around 1.5 million in-language radio episodes are downloaded each month; the Federation of Ethnic Communities' Councils of Australia (FECCA) has described the SBS as "critical for social inclusion purposes for Australian CALD communities." SBS is clearly viewed this way in the broader community. In a recent survey by Pollinate on attitudes towards television broadcasters</p> <ul style="list-style-type: none"> <li>• 54% of respondents agreed that SBS helps Australia to be a more inclusive nation;</li> <li>• 63% agreed that SBS represents the cultural diversity of Australia on-screen; and</li> <li>• 65% agreed that SBS helps them understand and appreciate different cultures.</li> </ul>
<p>3. Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity</p>	<p>By producing content for diverse audiences, SBS promotes access and equity, allowing individuals from multilingual or multicultural backgrounds to participate in Australian society. Showing content of wide appeal, even if not directly related to serving multilingual or multicultural audiences, gives SBS an opportunity to promote its other activities and engage the broader population on relevant issues.</p>
<p>4. Economic and regional development, including employment and investment growth</p>	<p>SBS employs 1466 staff, and also supports the employment of producers of its commissioned content: over 200 hours of commissioned content aired on SBS and SBS VICELAND in 2016-17, with a further 120 hours of non-sport commissioned content on NITV.<sup>23</sup> This expenditure supports the employment of a number of additional jobs in the production sector and thus supports the broader media ecosystem. Improving participation in Australian society by multicultural and multilingual groups may also contribute to Australia's overall economic development.</p>
<p>5. The interests of consumers generally or of a class of consumers</p>	<p>By providing distinctive content, SBS is able to offer greater choice to consumers. Providing additional choice is broadly in the interests of consumers. As noted above, SBS is uniquely positioned among broadcasters in providing a significant proportion of CALD content. SBS also provides a large share of factual content and news and current affairs content.</p>

Beyond more clearly defining the public interest, we also suggest the guiding principles should recognise that competitive neutrality needs be considered in the context of how SBS achieve its objectives through a suite of content and platforms, recognising the interdependencies between content and platforms and audience pathways, rather than a narrow assessment of individual programs on single platforms. Ultimately, SBS need to provide a comprehensive schedule of programs that work together to best achieve its Charter obligations and public interest objectives. For example, some broader appeal programs may be used to draw in viewers and promote other programs in order to achieve the broader public interest objectives in the SBS Charter.

<sup>23</sup> SBS Annual Report 2016-17.

# Excerpt 2: Deloitte Access Economics (cont)

## 3.4 Addressing question 7 and 8 in the issues paper: evidence on competitive neutrality

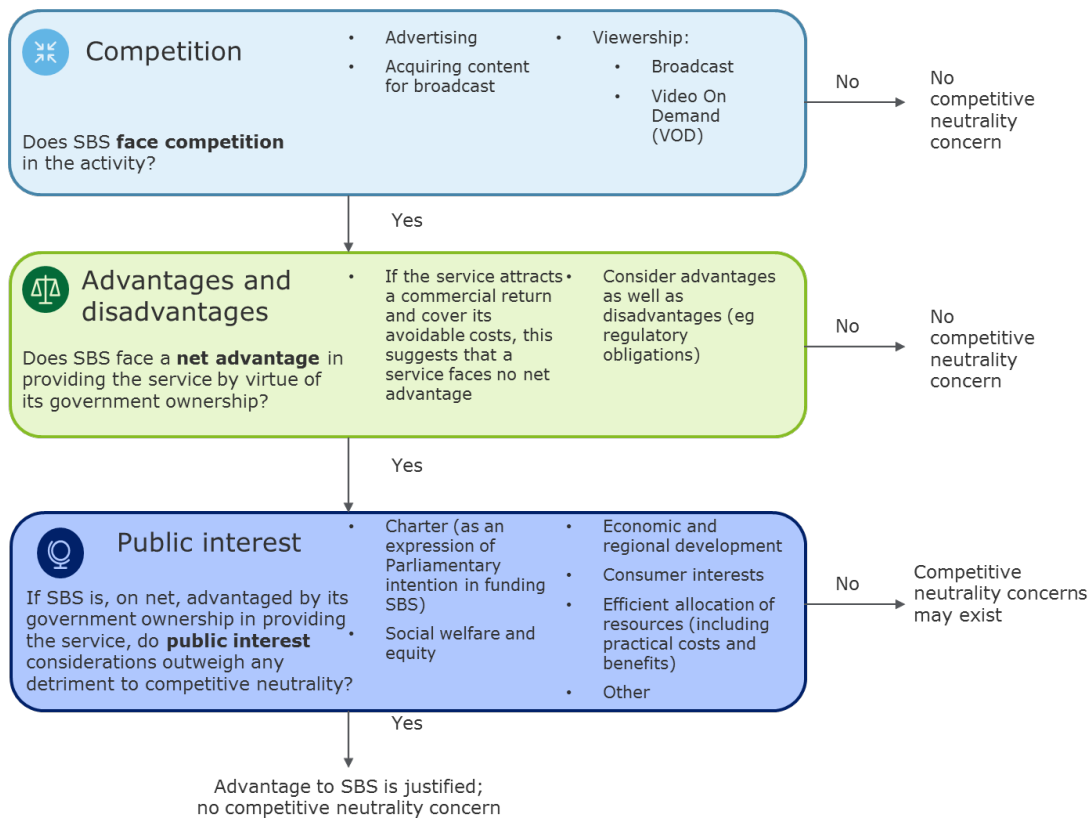
**Question 7:** Noting that unlike the ABC, the SBS does not have a requirement to take account of the “broadcasting services provided by the commercial broadcasters” and that the SBS has the ability to seek advertising to partially fund its activities, how does the SBS approach the broad issues of competitive neutrality in relation to commercial players?

**Question 8:** Considering the commercial activities of the national broadcasters (e.g. where they are selling or purchasing goods and services), is there evidence that they have taken undue advantage of their government ownership, to the detriment of competitive outcomes?

### Approach to assessing competitive neutrality

The key question for the Inquiry is whether SBS is compliant with the principles of competitive neutrality. Figure 3.1 sets out what Deloitte Access Economics believes is the appropriate economic framework to determine whether competitive neutrality applies to an activity of SBS, and whether SBS is compliant with the principles of competitive neutrality in respect of that operation.

Figure 3.1: Framework for assessing whether SBS activities raise competitive neutrality concerns



Adapted from Australian Government 2004 Competitive Neutrality Guidelines for Managers.

The requirements of each of the three main elements of this framework are set out below.

### Competition

As noted in Chapter 2, SBS potentially competes with other market participants in:

- Attracting **audiences** on both broadcast television and video on demand (VOD) services<sup>24</sup>
- Attracting **advertising**<sup>25</sup>
- Acquiring **content** for broadcast<sup>26</sup>

A number of SBS's activities are not subject to significant market competition. For instance, there is very little Australian competition for the acquisition of content in languages other than English. By definition, competitive neutrality requires SBS to be engaging in competitive behaviour against other market players. As a result, the acquisition of this content is unlikely to engage competitive neutrality concerns.

Importantly, competitive neutrality principles do not prohibit SBS from competing with other market players, they do not confine SBS to a 'market failure' role, and they do not prevent SBS from being successful in this competition. As described in the Harper Review:

*The principle of competitive neutrality does not extend to competitive advantages arising from factors such as business size, skills, location or customer loyalty.*

SBS is explicitly permitted to engage in commercial activity, namely, to show advertising and seek sponsorship under sections 45 and 45A of the *SBS Act 1991* (Cth).

It is only if SBS's success in a market is *a result of its government ownership* that competitive neutrality concerns may be enlivened.

### Advantages and disadvantages for SBS relative to other market players

A government entity will only engage competitive neutrality issues if it has a net advantage as a result of government ownership. As a result, both the advantages and disadvantages associated with SBS's government ownership need to be considered, not just the advantages.

The full range of advantages and disadvantages that SBS has relative to other market participants are discussed in Chapter 4. To summarise for the purpose of this chapter, there are a number of ways that SBS is advantaged or disadvantaged as a result of its position as a public broadcaster. These include:

- SBS receives government funding which means that unlike commercial FTA broadcasters it does not have to generate a commercial rate of return across all of its services, although SBS does generate commercial revenue as its operating model permits it to generate some advertising revenue. It also has an advantage in respect of the spectrum it receives as it does not pay annual spectrum charges unlike the commercial broadcasters.
- A key disadvantage is that SBS can only show 5 minutes of advertising per hour of programming under ordinary circumstances. As discussed in Chapter 4, this limits its ability to effectively compete for advertising dollars.
- SBS is also required to provide content in accordance with the objectives of its Charter whereas commercial broadcasters (and any other SVOD or subscription providers who also provide content) do not have an overarching Charter and thus are free to focus on any material that can attract broad audiences.

<sup>24</sup> As described in the Issues Paper, p 7: "With a substantial back catalogue of popular and niche entertainment and informative content, SBS On Demand competes directly with subscription on demand services such as Stan, Foxtel and Netflix for content and audiences."

<sup>25</sup> <https://tvtonight.com.au/2015/03/free-tv-whinging-over-sbs-ads-again.html>

<sup>26</sup> Darren Davidson, *Calls to rein in ABC and SBS*, The Australian, July 31 2017.



## Excerpt 2: Deloitte Access Economics (cont)

- SBS is also subject to a number of unique regulatory obligations which commercial broadcasters are not subject to:
  - Remuneration of SBS's Board of Directors and Managing Director is set by the Commonwealth Remuneration Tribunal;
  - SBS cannot take on private debt without the permission of the Finance Minister;
  - SBS's management is accountable to the SBS Board appointed by the Commonwealth Government, and ultimately to Parliament. Management must appear at parliamentary hearings and SBS is subject to Freedom of Information (FOI) requests.

The net benefit to SBS as a result of its government ownership or other regulatory advantages, to the extent any exists, is unclear.

We note that some of these advantages and disadvantages do not automatically flow from government ownership, but rather from regulatory obligations imposed by government. In some cases it is difficult to separate the two and many of the regulatory obligations would be unlikely to be acceptable to a non-government owned entity. Therefore we consider it relevant to have regard to all the obligations placed on SBS by government when considering competitive neutrality. For the purpose of this analysis, the whole set of SBS's regulatory advantages and disadvantages are considered.

### Public interest

If a particular area of SBS's activity were to be identified as operating within a competitive market, and even if a net advantage were identified for SBS by virtue of its government ownership, SBS's operations can still be consistent with competitive neutrality, if the public interest benefit from SBS engaging in this activity exceeds the cost associated with not complying with competitive neutrality. This 'cost' might be in the form of impacts to competitive markets – for example materially 'crowding out' other content or reducing advertising revenues.

The Issues Paper for the Inquiry notes that "*successive governments have decided that funding of the national broadcasters is in the public interest*". The SBS Charter, as an expression of Parliament as to the purpose of this funding, should be the touchstone for determining what constitutes public interest for its activities. Beyond the Charter, SBS's activities may broadly engage a number of different public interest objectives identified in the Competition Principles Agreement including: social welfare and equity; access and equity; economic and regional development; the interests of consumers generally or a class of consumers; and the efficient allocation of resources.

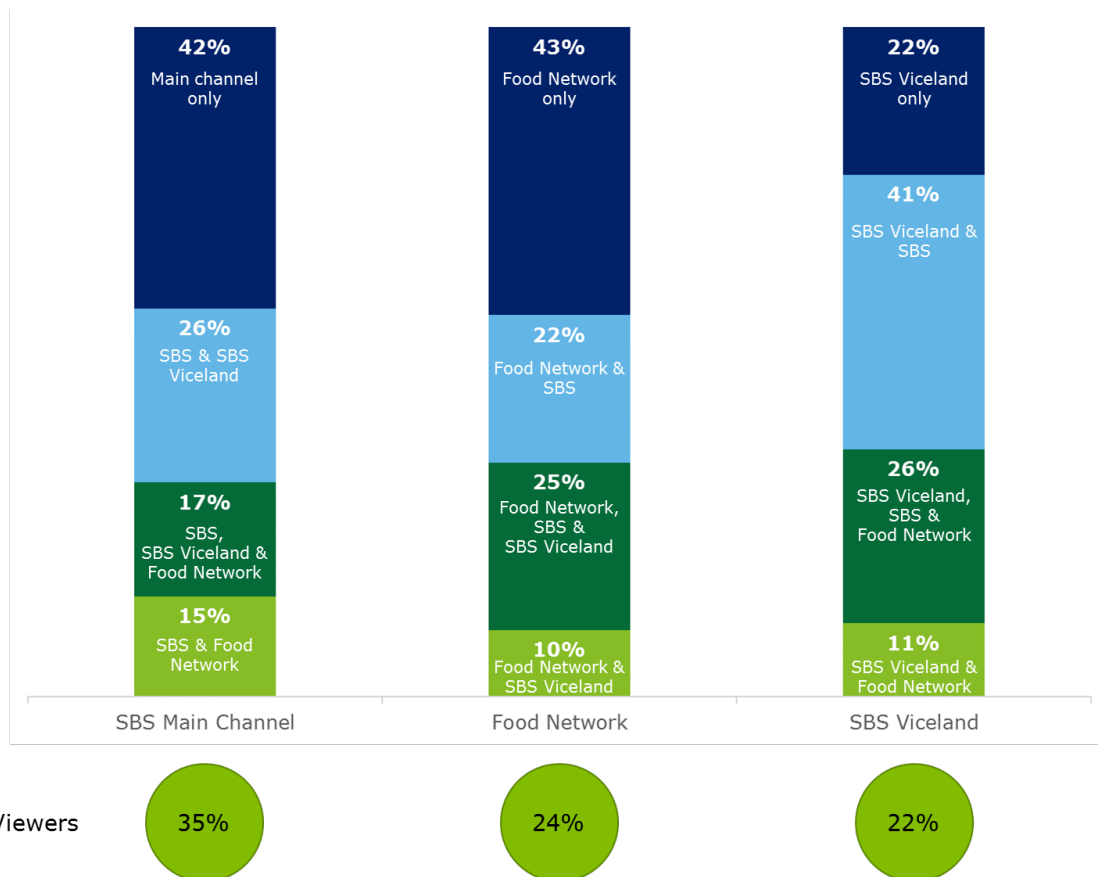
It should also be noted that material of broader appeal may nevertheless indirectly support the public interest by:

- **Providing advertising funds:** revenue from programs of broad appeal helps to support more niche content such as foreign language programming or content provided to specific groups in the community (e.g. new migrants);
- **Ensuring cost-efficient delivery of programs:** While SBS usually acquires content from a disparate range of distributors, sometimes rights holders sell a number of shows for one fee ('bundling'). Acquiring content in bundles, where possible, may allow SBS to acquire more specific content efficiently, but can also assist to fill its schedule, which helps to use its broadcast hours efficiently and ensure scarce resources can be devoted to achieving its Charter objectives.
- Providing content with general appeal allows SBS to **cross-promote content** with a more direct connection to its Charter. Indeed, part of SBS's principal Charter function is to inform, educate and entertain all Australians.

Figure 3.2 below shows the overlapping and unique shares of audience for viewing SBS, SBS VICELAND and Food Network. 22% of weekly audiences viewed only SBS VICELAND among these 3 stations; the number who viewed both SBS and SBS VICELAND was 41%. Similarly, 43% of weekly audiences viewed only Food Network, but a combined 13.6% viewed some combination of SBS or SBS VICELAND with Food Network. This suggests that audiences tend to be attracted to content across the SBS network, rather than just to one program. A similar story exists in relation to SBS On Demand.



Figure 3.2: SBS weekly audiences (share of audience who view channel or combination of channels)



Source: SBS Brand Tracker Wave 12, Clarity Research, March 2018 (n=1005)

However, while recognising that SBS’s commercial activity forms part of a comprehensive service delivered to meet SBS’s Charter obligations, this ‘indirect public interest’ does not, in and of itself, mean that all such activities are permissible under competitive neutrality principles.

Even if it could be demonstrated that all three criteria in figure 3.2 were met and that competitive neutrality concerns may exist, a final step would be to examine whether any material detriment to competitive outcomes has actually occurred, or is likely to occur. This is not a straightforward task. However, we suggest the Inquiry consider the following factors which are drawn from Ofcom’s work in relation to the BBC.<sup>27</sup>

- Is competition likely to be adversely impacted rapidly or irreversibly?
- How similar are services to commercial offerings that currently exist or may emerge?
- Is the impact on competition in a new or embryonic market area?
- Are any competitors likely to be strongly affected by the change?
- In the case of impacts on audience – how many audiences are affected?
- What is the impact on commercial revenues for the affected broadcasters?

<sup>27</sup> Ofcom, *Assessing the impact of proposed changes to the BBC’s public service activities. A consultation on Ofcom’s procedures and guidance*. December 2016, p19, p

## Excerpt 2: Deloitte Access Economics (cont)

### Applying this approach to SBS

This section applies the approach set out in section 3.4 to the activities of SBS to help address Question 8 in the Issues Paper.

The wording used in the Issues Paper differs to that ordinarily used in the test of competitive neutrality in Australia. The Commonwealth's Competition Principles Agreement, and subsequent Competitive Neutrality Policy, put forward that government businesses "should not *enjoy any net competitive advantage* simply as a result of their public sector ownership" (emphasis added). Likewise, the OECD definition put forward in the Issues Paper focuses on whether entities in a market are "*subject to undue competitive advantages or disadvantages*" (emphasis added).

In assessing whether SBS is acting in a way that is consistent with competitive neutrality principles, the framework set out in Section 3.4 can be applied to its activities. As noted above, in order to attract advertising, SBS needs to show content that attracts audiences. In practice, this may result in some overlap between content on SBS and commercial FTAs or in SBS showing some content which may attract audiences away from commercial broadcasters. At the same time this content may help attract audiences to other content which may be closely connected to the SBS Charter or support other broader public interest objectives.

For this reason, there is value in considering competitive neutrality issues holistically rather than undertaking a line-by-line assessment of individual programs. The approach below sets out how competitive neutrality principles can be applied to SBS across its key activities:

- The market for advertising
- Content acquisition for SBS main channel
- SBS VICELAND
- Food Network
- SBS On Demand
- NITV
- World Movies.

### 3.4.2 Competitive neutrality and advertising

#### Competition

As discussed in more detail in Chapter 2, SBS competes with FTA TV and radio, STV, digital platforms,<sup>28</sup> online news organisations such as Fairfax and News Corporation and highly visited digital vertical sites for advertising dollars.

#### Advantages and disadvantages of government ownership

In relation to advertising there are two potential competitive neutrality considerations:

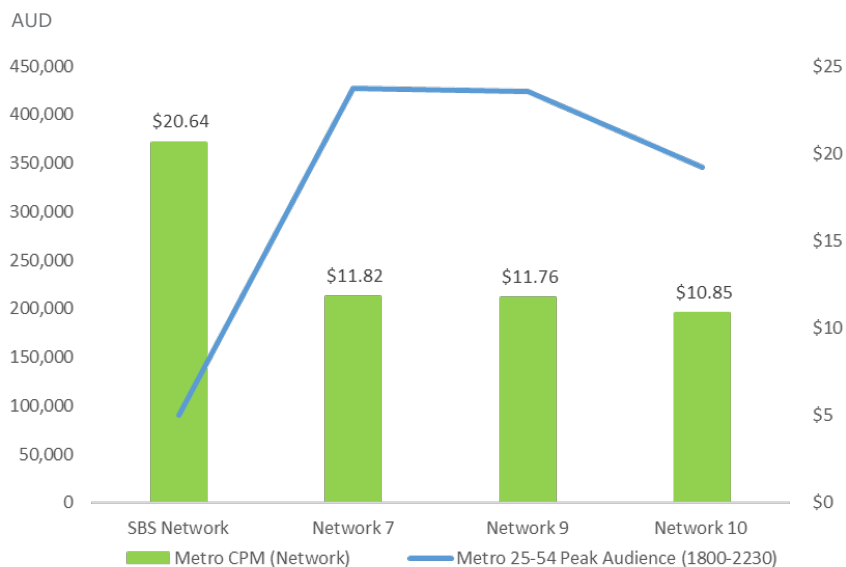
1. SBS is able to use its government ownership to obtain more favourable terms from advertisers (either undercharging or overcharging);
2. SBS is able to use its government ownership status and government funding to purchase content that competes and attracts audiences from commercial market participants, indirectly reducing the size of its potential advertising revenues.

Industry data indicated that the average yield of advertising on SBS – measured as the average cost to reach one thousand audiences with a single advertisement – was between 50% and 100% higher than the equivalent cost for the commercial free-to-air broadcasters. There is no evidence that advertising rates are artificially low or effectively being subsidised from government funding.

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<sup>28</sup> For the purposes of this report, and consistent with the current ACCC Inquiry, the term 'digital platforms' encompasses digital search engines, social media platforms and other digital content aggregation platforms. This includes Google, Facebook and YouTube.

Chart 3.1: Cost per thousand (CPM) for SBS and peak audience levels relative to commercial networks



Source: AdQuest (AQX) Standard Report, Metro Adex Analysis Board Reporting Template, 1/07/2016 - 30/06/2017, AQX Weekly. OzTAM Audience, Projection (P 25-54), Metro 5 City Panel plus Subscription, Projection: Consolidated to 28: July to June 2017

In interacting with advertising agencies, SBS is a price-taker in both television and digital markets. It is unlikely that advertising agencies would have an incentive to favour SBS purely on account of its government ownership rather than its relative reach.

SBS also noted that the fact that it could only advertise for 5 minutes per hour meant that it had more limited 'inventory' i.e. reach. SBS provided data for the 2016-17 financial year on the number of 30-second advertising units available during peak viewing hours (6:00 PM to 10:30 PM) for TV stations in metropolitan areas, along with the advertising revenue and audience available during this period. On the SBS main channel, 16,425 peak advertising units were available in the year, compared to 42,705 on each of the commercial networks. This places SBS at a disadvantage, particularly with certain advertisers who are looking to reach a large number of viewers within a short time period.

The combination of a lower number of available advertising units and the fact that SBS charges higher rates than other advertisers indicates that SBS does not benefit from its government ownership in respect of advertising.

### 3.4.3 Content acquisition for SBS main channel Competition

Much of the content on the SBS main channel is dissimilar to material that is shown on commercial networks:

- 58% of prime-time programming, and 73% of programming across the day, in the financial year 2017-18 (up to 17 April) was CALD.
- Much of this content is in LOTE, which are not broadcast on either the commercial broadcasters or the ABC.

CALD or LOTE content, once acquired, will still compete with other market participants for audiences even if it is by its nature very different content (and some of this content may equally be screened to some degree by another market participants e.g. Netflix). However, this content would seem to be clearly in line with SBS's Charter objectives and the public interest in showing this would generally be seen to outweigh any adverse impact, if any, on competitive neutrality.

## Excerpt 2: Deloitte Access Economics (cont)

When it does compete (besides competing in the market for advertising discussed above), SBS has attracted scrutiny from its commercial competitors in its acquisition of content with a broad general appeal. This has been a particular concern of commercial broadcasters in relation to high-profile English language drama programs, such as *The Handmaid's Tale*, *The Good Fight* and *The Night Manager* (which aired on Foxtel prior to SBS).<sup>29</sup> This content, in the view of commercial broadcasters, has a less clear connection to the SBS Charter than other content on SBS.<sup>30</sup> The process for acquisition and broadcast of this content is the focus of this section.

### **Advantages and disadvantages of government ownership**

The acquisition process for television content is largely controlled by distributors. Although a competitive bidding process applies, the actual amounts bid for programs remain commercially confident. Commercial broadcasters have argued that SBS has "driven up the cost of commercially attractive [drama] content".<sup>31</sup> In theory, SBS could use its government funding to bid above the 'commercially viable' price for this content, which in the absence of public interest benefits, could raise competitive neutrality concerns.

In practice, a number of factors drive the television bidding process, none of which are related to SBS's government ownership.

- As a small participant in the broadcast television market, SBS has incentives to pursue more cost-effective options for purchasing content.
  - SBS occasionally buys programs based on the script alone without waiting for sample episodes to be made for this reason: as Michael Ebeid described the process in Senate Estimates, "*The reason we do that is that we get it a lot cheaper than if we wait for the production to be made. Then we'd have to pay a lot more to see how well it does overseas. That is why we buy on script.*"<sup>32</sup>
  - Several successful SBS programs were also purchased in the 'second window' – that is, after the content has been shown on another network – or in 'bundles' with other content that may have a broader or narrower appeal.
  - Consultation with SBS suggests that relationships with distributors, and an alignment between the SBS brand and particular types of content, have also contributed to successful acquisitions.
- In any case, commercial broadcasters have proven able to outbid SBS for content that it originally showed. An example of this is the motoring show *Top Gear*. Seasons 5 to 13 of *Top Gear* aired on SBS; by Season 10 in 2007, *Top Gear* was regularly attracting more than one million audiences nationally in the SBS main channel Monday 7:30pm primetime slot. However, when the opportunity for the show to return to market arrived, Nine entered a significantly higher bid than SBS and the show moved networks in 2009. This suggests that while SBS may be able to identify potentially popular content at an early stage its advertising restrictions can limit its ability to bid competitively with commercial FTA broadcasters for popular content.

### **Public interest and detriment to competitive outcomes**

It is nonetheless likely that some content acquired for the SBS main channel competes with that on other networks, and at least some of this content is likely to be partly supported by government funding.

If this is the case, then public interest considerations need to be considered. An assessment of public interest is ultimately a subjective one and will depend on the nature of the content being considered. It should be noted that the mere fact that some content is popular does not prevent from being in the public interest, indeed there is clearly a public interest served by increasing consumer choice and providing a compelling product.

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<sup>29</sup> Hansard, Senate Environment and Communications Legislation Committee Estimates, 24 October 2017, p. 153.

<sup>30</sup> See, eg, Don Groves (2018) *Oz gov't launches pubcasters inquiry*: <http://www.c21media.net/oz-govt-launches-pubcasters-inquiry/>

<sup>31</sup> <https://www.theaustralian.com.au/arts/review/abc-under-fire-as-calls-for-quotas-on-local-content-gain-traction/news-story/570527de8f1513a3735447120b035893>

<sup>32</sup> Hansard, Senate Environment and Communications Legislation Committee Estimates, 24 October 2017, p. 153.

However, where content is similar to that shown by other commercial entities, such content would be less likely to have direct public interest benefits (to the extent that such material or similar material may be provided elsewhere) and thus any public interest benefits will be indirect and related to:

- Advertising: As SBS's most viewed channel revenue from programs of broad appeal can support content with a narrower appeal
- Attracting audiences who will then go on to view other content e.g. LOTE and CALD content.

It should be noted that although it is SBS's most viewed channel, the SBS main channel attracts a small share of the free-to-air broadcast audiences: in 2018, throughout the day, SBS attracted 3.9% of the total market and 2.7% of the key 25-54 demographic. In prime time viewing hours, this increases to 5.1% of total market share and 3.4% of the 25-54 demographic based on data for the 2018 calendar year to date.

SBS main channel, as per its charter, provides public interest benefits by broadcasting a large proportion of CALD material as well as content of broader appeal. At the same time, its relatively small market share means that any impact on competition is likely to be low. On balance, based on our analysis of information available, any impact on competition is likely to be outweighed by public interest benefits. As such, SBS main channel as a whole is unlikely to be breaching competitive neutrality principles.

#### **3.4.4 SBS VICELAND Competition**

SBS VICELAND, formerly known as SBS 2, emerged out of a content agreement in 2016 between SBS and US youth brand Vice. At launch, it was described as covering "culture, music, sports, fashion, technology and more from around the world".<sup>33</sup> SBS VICELAND airs a mixture of content provided by Vice, and content that formerly aired on SBS 2, some of which clearly has an international focus (for instance, Chinese dating show *If You Are The One*). Vice content, however, has attracted some concern from critics, particularly where there it is alleged there is not an obvious link to the SBS Charter.<sup>34</sup>

We note that in the financial year 2017-18 (up to April 2018), the proportion of CALD hours on SBS VICELAND has been 71% across the full day and 40% for programming with a prime time start (between 6:00 PM and midnight). Of this prime time content, as much as half has been in LOTE, a category not represented on other broadcasters.

However, some types of content on SBS VICELAND appear to be competing with commercial operators. For example, the long-running animated comedy *South Park* has been on SBS since SBS brought it to Australia in 1998; several recent seasons are now available on Stan. More recently, *Brooklyn Nine-Nine* has been on SBS 2 and SBS VICELAND since 2013, and was recently added to the Australian Netflix library. Although SBS has shown this content for some time (whether on the SBS main channel, SBS 2 or SBS VICELAND), there is nonetheless overlap with the interests of commercial operators (in this case, SVOD services).

#### **Advantages and disadvantages of government ownership**

Confidential data from SBS provided in the context of this review suggests that SBS VICELAND is forecast to cover its avoidable costs in 2017-18 and make a modest return. Given that SBS VICELAND appears to be covering its avoidable costs, it does not appear that government funding currently provides SBS VICELAND with a material advantage to outbid commercial operators for content.

#### **Public interest and detriment to competitive outcomes**

As noted above, most of the content on SBS VICELAND is culturally and linguistically diverse. Indeed, this was a driving factor in the formation of the SBS VICELAND partnership: SBS Managing Director Michael Ebeid said at the time "*Exploring diversity through culture is at the heart of SBS's purpose.*"

<sup>33</sup> <https://www.sbs.com.au/news/the-feed/viceland-to-launch-in-australia-in-partnership-with-sbs>

<sup>34</sup> See, for example: <https://www.smh.com.au/entertainment/tv-and-radio/the-launch-of-sbs-viceland-may-be-audacious-but-its-also-wrongheaded-20161121-gst18v.html> 'Many of the programs running on Viceland could slot easily into the schedules of other FTA digital channels.'

## Excerpt 2: Deloitte Access Economics (cont)

The Vice content shown on SBS VICELAND approaches multiculturalism and diversity through a different lens to that of other SBS content. Nonetheless, many pieces of content on the network focus on topics of public interest: for example exposure to non-Anglo Saxon cultures<sup>35</sup> and social inclusion.<sup>36</sup>

**SBS VICELAND is forecast to cover its avoidable costs in 2017-18 (it has not done so in the past two years, largely due to costs associated with A-league coverage). Further, SBS VICELAND's market share is smaller than that of the SBS main channel, at 1.2% of prime-time audienceship, and only slightly higher among the desirable 25-54 market at 1.5%, and hence its impact competition in the market place is likely to be small. There is a strong case that it is complying with competitive neutrality principles.**

### 3.4.5 Food Network

#### Competition

Food Network was launched in 2015 on the basis of a content acquisition agreement with Scripps Networks Interactive. Like SBS VICELAND, the majority of content on the channel is sourced from an international partner. Unlike SBS VICELAND, however, the explicit aim of the network was to provide a self-sustaining source of commercial revenue.<sup>37</sup> Food-centric content has been a staple for commercial networks (both free-to-air and subscription) in recent years. On free-to-air television, competitive reality formats such as *Masterchef* (Ten) and *My Kitchen Rules* (Seven) share the airwaves with celebrity chefs such as Jamie Oliver (Ten), Luke Nguyen (SBS) and Nigella Lawson (ABC). Although SBS has traditionally shown a variety of food programming, that programming tends to focus on exploring culture through food and multicultural diversity.<sup>38</sup> As a result, Food Network is in a far more explicitly competitive space than either the main SBS channel or SBS VICELAND.

#### Advantages and disadvantages of government ownership

Food Network has an independent profit and loss statement and any additional costs are attributed to Food Network as part of its agreement with Scripps Networks Interactive. Food Network is generating a commercial return. Although food content is a highly competitive market, competitive neutrality does not prohibit SBS from competing in this market on commercial terms.

**As with SBS VICELAND, there is a strong case that the Food Network is complying with competitive neutrality principles, noting that it provides a financial return to SBS.**

### 3.4.6 SBS On Demand

#### Competition

SBS On Demand was first launched in 2011, combining exclusive content with 'catch-up' video content that was originally shown on SBS or its broadcast channels. SBS On Demand was among the first Australian video on demand (VOD) services to launch:

- ABC iView launched in 2008
- Seven's catch-up service 7plus, and Nine's original catch-up service FIXPlay (now 9Now), were each launched in 2010<sup>39</sup>
- Ten launched its separate catch-up service Tenplay in 2013<sup>40</sup>
- Local STV player Stan (owned by Fairfax and Nine) and international market leader Netflix both launched in 2015<sup>41</sup>
- Through various iterations of on demand services (including those reliant on cable TV boxes and a joint venture Presto with Seven), Foxtel (owned jointly by Telstra and News Corp Australia) launched its current online streaming service Foxtel Now in 2017<sup>42</sup>

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<sup>35</sup> For instance, *Hate Thy Neighbour*, a series focusing on racial 'hate groups' across the world, or *The Vice Guide to North Korea*, a documentary.

<sup>36</sup> For instance, the documentary *Gay Conversion Therapy*, or the *Trixie and Katya Show* starring 'drag queens' Trixie Mattel and Katya Zamolodchikova.

<sup>37</sup> <https://www.smh.com.au/business/companies/sbs-to-launch-24hour-food-channel-in-talks-with-government-over-funding-cuts-20150930-gjxwc6.html>

<sup>38</sup> See, for example, programs such as *Luke Nguyen's Food Trail* or *Poh & Co*.

<sup>39</sup> <https://tvtonight.com.au/2017/06/seven-to-launch-new-catch-up-platform.html>;

<sup>40</sup> <http://techgeek.com.au/2013/09/29/tenplay-soft-launches-network-tens-new-catch-service-compare/>;  
<https://tvtonight.com.au/2010/04/nine-launches-fixplay-video-catch-up.html>

<sup>41</sup> <https://www.theguardian.com/tv-and-radio/2015/jan/26/fairfax-and-nines-streaming-service-stan-launches-ahead-of-netflix-arrival>

SBS On Demand, along with the catch-up services of the other free-to-air broadcasters, operates on an advertising-driven model, while Stan, Netflix and Foxtel Now are funded by user subscriptions.

Compared to the relative market share of its television channels in the traditional broadcasting market, SBS On Demand is relatively successful, yet still rates mid-range on market share compared to other VOD services as shown in Chart 2.7 above.

Much like SBS and SBS VICELAND, much of the content on SBS On Demand is distinctive from that shown on the other free-to-air networks. Even outside of catch-up content from the SBS broadcast channels, 71% of the hours of content on SBS On Demand are culturally and linguistically diverse (CALD). Around half of this content is in languages other than English. Netflix is the only other significant player in this market, with a considerable library of LOTE content.

Nevertheless, concerns have been raised that programs on SBS On Demand are too similar to that which might be shown on commercial operators' catch-up or subscription VOD services. The Issues Paper asserts that SBS On Demand is "directly competing" with subscription VOD services.

### **Advantages and disadvantages of government ownership**

It is not evident that SBS On Demand is using its government ownership to advantage over commercial players. Although SBS On Demand is a free service for the end user, deciding to offer this service on an AVOD basis is a commercial decision that other players could similarly choose to make as many have. Presumably, another private commercial operator could assemble a similar library of content and make it freely accessible with advertiser support; any advantage that SBS has in this task is arguably attributable to its historical brand and size, rather than to government ownership. Subscription-based VOD providers could do so as well.

Data indicates that SBS On Demand is projected to recover its costs in 2017-18.<sup>43</sup> While SBS On Demand has not fully covered its avoidable costs in the early years, its financial position has improved over time reflecting the initial investment required in starting SBS On Demand.

### **Public interest and detriment to competitive outcomes**

There are strong public interest arguments for providing content that connects with mainstream Australia on SBS On Demand. Data provided by SBS showed that:

- 14% of viewers of *The Handmaid's Tale* on SBS On Demand (a relatively dark drama that has proven popular with Australian audiences) also watched drama in languages other than English on the service;
- around 9.5% also watched *Insight*, an SBS staple current affairs program; and
- more generally, 24.4% of viewers of *The Handmaid's Tale* went on to view a LOTE drama, SBS commissioned series, or news or current affairs program on SBS On Demand.

The proportion of *Handmaid's Tale* viewers with overlap to other categories of SBS programming are outlined in Chart 3.2 below.

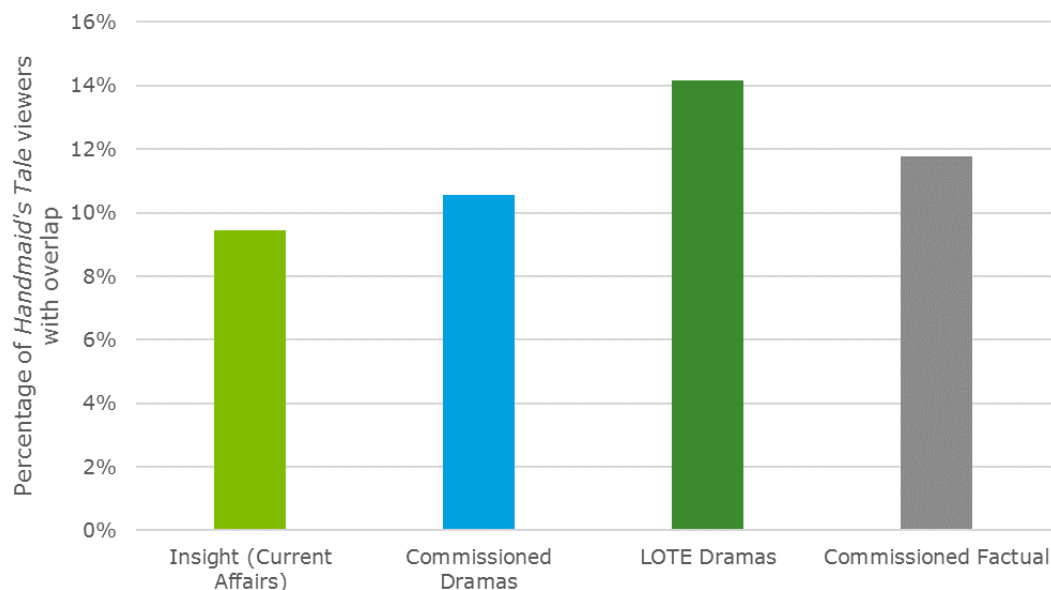
<sup>42</sup> <http://www.news.com.au/entertainment/tv/foxtel-unveils-its-new-streaming-service-foxtel-now-from-10-a-month/news-story/3c559a4baa56839466dfc12779285b82>

<sup>43</sup> SBS On Demand's accounting statements do not incorporate the cost of catch-up rights for programs on SBS and SBS VICELANDSBS VICELANDSBS VICELANDSBS VICELAND. These are attributed to the network of original broadcast, as they are not always separated during transactions. At the same time some material purchased for On Demand can then be broadcast, so the net effect is likely to balance out.



## Excerpt 2: Deloitte Access Economics (cont)

Chart 3.2: Overlap between Handmaid's Tale viewers and other SBS programming on SBS On Demand



This suggests that the availability of some popular content *on a service where other content can be immediately viewed* helps to encourage users to explore that other content – broadening the reach of content that clearly fulfils SBS's public interest goals.

Further, commercial free-to-air catch-up services are limited by comparison, hosting a smaller range of content for a shorter period of time. SBS On Demand is consequently a unique offering, particularly in its LOTE and broader CALD content, which supports consumer choice. Indeed, SBS is compelled to offer digital media services by its Charter to ensure it reaches all Australians.

**SBS On Demand, like the SBS main channel provides public interest benefits by broadcasting a large proportion of CALD material as well as content of broader appeal and in so doing helps fulfil SBS's charter requirement to provide digital media services to the public. SBS On Demand is also projected to recover its incremental costs in 2017-18 indicating that it currently operates largely independently of government funding. On balance, based on our analysis of information available, any adverse impact of SBS on Demand on competition in the market is likely to be outweighed by public interest benefits. As such, SBS On Demand as a whole is unlikely to be breaching competitive neutrality principles.**

### 3.4.7 NITV

NITV largely serves SBS's public interest objectives and attracts a very small audience share of 0.2% to 0.3% in most metropolitan and regional markets. As a result, it is unlikely to create competitive neutrality concerns.

### 3.4.8 World Movies

SBS has offered World Movies as a subscription television business supplying channels including the "World Movies" branded channel and now branded VOD destinations since 1995. World Movies is currently a branded VOD destination on all Foxtel streaming and catch up services including Foxtel Now, and the STAN SVOD service. The World Movies channel ceased on Foxtel at the end of January 2018 and was replaced by a branded destination on Foxtel services and a weekly branded block on the Foxtel subscription TV "Masterpiece" movies channel. SBS curates international and arthouse movies from distributors worldwide as part of this service. This service is both in line with SBS's Charter obligations to provide multicultural and multilingual content and it also generates a commercial return for SBS suggesting that in providing World Movies is unlikely to be violating competitive neutrality principles.



### 3.5 Addressing question 13 in the issues paper: balance between competing and complementing?

**Question 13: From your perspective do the national broadcasters seek a balance between competing in the market and complementing the market? Is that balance the same for traditional broadcasting and for new digital platforms?**

The SBS Charter specifically permits SBS to engage in commercial activities including advertising under sections 45 and 45A of the *SBS Act 1991* (Cth). As a result, SBS is permitted to compete with other entities in attracting advertising revenue. Similarly, from a competitive neutrality perspective SBS is permitted to compete vigorously (and doing so would be consistent with competition principles) as long as it does not use its government ownership in a way that gives it an unfair competitive advantage over its competitors.

Thus from a competitive neutrality perspective there is no requirement for SBS to balance the need to compete and complement the market- subject to the other requirements of competitive neutrality it is free to compete with other broadcasters and content providers on other platforms.

At the same time, the SBS Charter sets out an objective for SBS to contribute to the overall diversity of Australian and radio television services. Any (explicit or implicit) mandate that exists for SBS to complement the market would appear to arise from its Charter and not from competitive neutrality principles.

As discussed earlier in this Chapter, showing content which competes or overlaps with content shown by other broadcasters does not necessarily mean it is not in the public interest. This means it is difficult to assess individual pieces of content as "competing" or "complementing" with the market. Ultimately a better approach to assessing compliance with competitive neutrality relies upon assessing whether SBS is acting in the public interest broadly through its activities, considering the totality of its activities.

The precise balance to be struck between competitive material which is similar to that offered elsewhere and complementary material which extends the diversity of content available should ultimately be assessed in terms of the extent to which SBS as a whole serves the public interest. If SBS only presented the same or similar content to other market participants then it would not meet some of its Charter requirements. It could also fairly be accused of using its government funding advantage and not being able to demonstrate public interest benefits from doing so.

However, if SBS simply showed niche 'complementary' content it would be unlikely to serve all the objectives of its Charter including its role in promoting multicultural content and entertaining all Australians.

Ultimately there are multiple ways SBS could meet its Charter and competitive neutrality requirements – for example by offering a broad range of content not shown elsewhere or a smaller subset of high quality content not shown elsewhere that achieves a larger impact either by more directly meeting the Charter objectives or attracting broader audiences.

The issue for the review should be whether SBS's activities as a whole are consistent with competitive neutrality and its balance of content (across both traditional and new broadcasting platforms) serves its broader public interest objectives.

# 4 Regulatory advantages and disadvantages

### Key points

- There are a range of government support and regulatory advantages and disadvantages that apply both to SBS and other broadcasters in the market. The impact of many of these regulations on the relative playing field is difficult to measure.
- The main regulatory advantages for the national broadcasters are the direct government funding and access to spectrum they receive. The main regulatory requirements that constrain the national broadcasters are: the advertising restrictions in place (which limit their ability to raise commercial revenue) as well as the need to act in accordance with their Charter obligations and obligations as a public entity.
- The main regulatory advantages for the commercial FTA broadcasters are access to spectrum (which is generally valued above the cost of spectrum charges), anti-siphoning legislation and the prohibition on a fourth commercial broadcast licence. The main regulatory disadvantages for the commercial FTA broadcasters are the need to meet local content requirements (recognising that some of these would be met anyway) and restrictions on media ownership some of which have been relaxed recently.
- While it is not possible to precisely cost the myriad of regulations that apply to the sector, it is possible to examine the level of government support and regulatory advantages provided to each of the market participants over time.
- Relative to 2013-14, annual government funding for the national broadcasters has fallen by 3.1% (SBS has seen a fall of \$9.7 million in annual funding or 3.4% and ABC has had its funding decrease by \$33 million or 3.1% while some regulatory restrictions on commercial FTA broadcasters have eased and spectrum pricing (which replaced licence fees) is 72.3% or \$105 million per annum less than the value of licence fees in 2013-14).
- Overall, the trajectory of regulatory changes in recent years has broadly favoured the commercial FTA broadcasters relative to the national broadcasters.

This chapter addresses the second dot point listed in the Terms of Reference for the review, namely 'the regulatory obligations for ABC and SBS compared to those for private sector operators'. It also addresses the first part of Question 9 in the Issues Paper:

*What is the differential impact of regulation on commercial and national broadcasters, and is there evidence of consequent adverse impact on competition and outcomes?*

This analysis is relevant because an important element of competitive neutrality is whether a business enjoys a net competitive advantage because of its government ownership. While the national broadcasters receive government funding and access to spectrum, they also face material restrictions as a government entity via advertising restrictions, Charter obligations and public entity obligations and accountability requirements.

We note that some of the advantages and disadvantages discussed in this Chapter do not automatically flow from government ownership, but rather from regulatory obligations imposed by government. In some cases it is difficult to separate the two and many of the regulatory obligations would be unlikely to be acceptable to a non-government owned entity. Therefore we consider it relevant to have regard to all the obligations placed on SBS by government, and indeed Question 9 asks us to do so.

Similarly, commercial broadcasters are not subject to legislative advertising restrictions like the national broadcasters or public entity obligations. However they are required to comply with local content rules and have advertising restrictions within the Commercial TV Industry Code of Practice and obligations such as the Children's Television Standards 2009.

Both community and subscription TV broadcasters (STV) receive some funding from government and benefit from the restriction on the fourth commercial television licence. The key regulatory disadvantages experienced by STV include local content rules in relation to drama expenditure and the anti-siphoning scheme.

Table 4.1 below gives an overview of the regulatory advantages and disadvantages for national broadcasters relative to other participants in the television broadcasting market.

Table 4.1 Forms of regulatory advantage and disadvantage for the national broadcasters relative to other market participants

Source of regulatory advantage/ disadvantage	Position of national broadcasters relative to commercial FTA broadcasters, community TV and STV
<b>Government funding</b>	<ul style="list-style-type: none"> <li>• Advantage to the national broadcasters</li> </ul>
<b>Access to spectrum/Licence fees<sup>^</sup></b>	<ul style="list-style-type: none"> <li>• Advantage to both national broadcasters and commercial FTA broadcasters.</li> <li>• Commercial FTA broadcasters are charged for access to spectrum, though this is heavily discounted relative to the value of spectrum. The amount paid per annum been reduced by 72% since 2013-14 with the reduction and abolition of licence fees and implementation of spectrum pricing at a lower rate (see section 4.3.5)</li> </ul>
<b>Income tax exemption</b>	<ul style="list-style-type: none"> <li>• Advantage to national broadcasters</li> </ul>
<b>Local Content Rules</b>	<ul style="list-style-type: none"> <li>• Disadvantage for commercial FTA broadcasters. Less restrictive content rules on drama also apply to STV relative to commercial broadcasters.</li> </ul>
<b>Charter obligations</b>	<ul style="list-style-type: none"> <li>• Constrains the operation of the national broadcasters in terms of the content they focus on relative to commercial and STV broadcasters</li> </ul>
<b>Public entity obligations and accountability requirements</b>	<ul style="list-style-type: none"> <li>• Disadvantage to national broadcasters</li> </ul>
<b>Anti-siphoning legislation</b>	<ul style="list-style-type: none"> <li>• Provides an advantage to national broadcasters and commercial FTA broadcasters. Commercial FTA broadcasters gain the greatest monetary value from this regulation due to restrictions on advertising for the national broadcasters which limits their ability to bid for many of premium sporting events.</li> </ul>
<b>Restriction on advertising</b>	<ul style="list-style-type: none"> <li>• Disadvantage to national broadcasters</li> </ul>
<b>Prohibition on 4<sup>th</sup> commercial licence</b>	<ul style="list-style-type: none"> <li>• Advantage to all sectors as it reduces competition in the market but likely to have a more material financial impact on commercial FTA broadcasters.</li> </ul>
<b>Screen Australia funding</b>	<ul style="list-style-type: none"> <li>• Applies to all market participants</li> </ul>
<b>Tax offsets</b>	<ul style="list-style-type: none"> <li>• Applies to all four broadcast sectors through provision of tax offsets to production companies</li> </ul>
<b>Captioning requirements</b>	<ul style="list-style-type: none"> <li>• Applies to all four broadcast sectors</li> </ul>

Source: Deloitte Access Economics

Note: <sup>^</sup>The spectrum provided to the commercial broadcasters is of greater value than that provided to the national broadcasters (see Appendix A for details)

† In practise the advertising restrictions on SBS means that it benefits less from these regulations than commercial FTA broadcasters.

## Excerpt 3: Deloitte Access Economics (cont)

The extent to which this range of regulatory advantages and disadvantages can affect competition and outcomes in the market ultimately depends on the behaviour of market participants. SBS gains an advantage from the government funding it receives but is limited in its ability to raise revenue of its own due to advertising restrictions. If this government funding was used solely to acquire programs that would otherwise have been shown by other segments of the market, there is scope for SBS to have a negative impact on competition by using their receipt of government funding to gain an unfair advantage on their commercial competitors.<sup>44</sup>

However, if government funding is used to achieve broader public interest objectives by extending consumer choice and offering content that satisfies the objectives in its Charter then the potential impact on competition will be much lower and outweighed by the positive impact on consumer outcomes. Thus whether or not SBS is able to use any regulatory advantages to impact competition will largely depend on the operational decisions they make. Nonetheless, understanding the nature of the regulatory advantages and disadvantages that apply to SBS is useful in assessing the extent to which they act in ways that are consistent with competitive neutrality. The following sections examine the key regulatory advantages and disadvantages facing different market participants.

Table 4.2 summarises the recent quantitative changes to government support for the national broadcasters and the commercial FTA broadcasters. Relative to funding in 2013-14, SBS has seen its annual funding fall by \$9.7 million (3.4%) while commercial FTA broadcasters benefitted from the reduction and subsequent abolition of licence fees and their replacement by spectrum pricing at a lower rate which has reduced the amount of charges they pay to government by \$104.6 million per annum.

Table 4.2: Value of changes to regulatory arrangements per year (2017-18 relative to 2013-14)

Broadcaster	Change since 2013-14
SBS	-\$9.7 million (-3.4%)
ABC	-\$33 million (-3.1%)
Commercial FTA	\$104.6 million (72.3%)

Source: Deloitte Access Economics

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<sup>44</sup> In some cases the receipt of government funding may not be sufficient to outbid the commercial FTA broadcasters where programs are likely to attract large audiences and hence advertising revenues.

## 4.2 National broadcasters

This section sets out the range of forms of government support provided to SBS and the ABC as well as key regulatory advantages relative to other market participants. Table 4.3 sets out the value of regulatory support and funding provided to the national broadcasters.

Table 4.3: Value of regulatory support/funding to National Broadcasters (\$ million)

Type of support (2017-18)	Total	Change since 2013-14	SBS	Change since 2013-14	ABC	Change since 2013-14
<b>Government Funding</b>	1324	-3.2%	280.1	-3.4%	1,044	-3.1%
<b>Value of access to Spectrum (annualized value)^</b>	307.7	Not calculated	121.4	Not calculated	186.3	Not calculated
<b>Prohibition on 4<sup>th</sup> commercial licence*</b>	33.6	Estimate not provided	33.6	Estimate not provided	Estimate not provided	Estimate not provided
<b>Total</b>	1,665		435.1		1,230	
<b>Digital switchover, Screen Australia funding, tax offsets</b>	Funding accrues to multiple broadcasting sectors	See appendix	See appendix	See appendix	See appendix	See appendix

Source: Deloitte Access Economics

\*Assumes SBS has 2% of overall advertising revenue, therefore they derive 2% of the value of the prohibition on the 4<sup>th</sup> commercial broadcaster estimated in section 4.3.3. Value of spectrum assumes ABC and SBS both have equal proportion of broadcasting spectrum and only ABC has access to ENG spectrum (see Appendix A for further discussion).

^See Appendix for further discussion on figures.

Table 4.4: Forms of regulatory advantage and disadvantage for national broadcasters not valued

Regulatory advantage not valued	Regulatory disadvantage not valued
Anti-siphoning legislation (of less value to national broadcasters than commercial broadcasters due to advertising restrictions)	Charter obligations
Corporate income tax exemption	Public entity obligations
	Captioning requirements

Source: Deloitte Access Economics

## Excerpt 3: Deloitte Access Economics (cont)

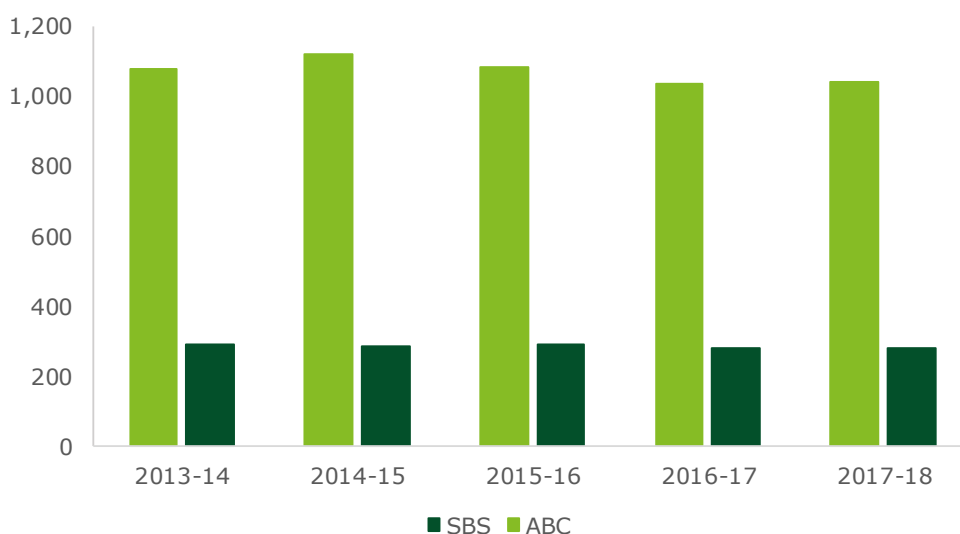
### 4.2.2 SBS and ABC funding

Both SBS and the ABC receive government funding to support their broadcasting and operational activities. This funding is the main channel through which government ownership advantages the national broadcasters.

According to the Department of Communication and Arts (DCA) Portfolio Budget Statements (PBS) in 2017-18 total government funding for SBS was \$280.1 million. The amount of government funding provided to the ABC in 2017-18 was \$1,044 million.

Chart 4.1 below shows funding to the national broadcasters from 2013-14 to 2017-18. Both the ABC and SBS saw a fall in their nominal funding levels of 3.1 and 3.4 per cent respectively over this period.

Chart 4.1: National broadcasters funding (\$ million)



Source: DCA PBS

The 2018-19 Budget froze the indexation of ABC from 2019-20 onwards. As discussed below, SBS received appropriations of \$8.7 million in 2018-19 and \$5.9 million in 2019-20, to reinstate funding that was removed in anticipation of legislation making favourable changes to the advertising restriction. This legislation failed to receive Senate approval and has since been withdrawn.

### 4.2.3 Charter obligations

The provision of national broadcasting services by the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Services (SBS) is authorised by other legislation, as these services are not licensed under the Broadcasting Services Act. Instead of being licensed, these services are authorised by their respective enabling Acts (i.e. the *Australian Broadcasting Corporation Act 1983*, the *Special Broadcasting Service Act 1991* and the *Parliamentary Proceedings Broadcasting Act 1946*).

In the case of SBS, the SBS Charter sets out the principal functions of SBS and a number of duties it has to fulfil. According to the SBS Charter, the principal function of the SBS is to "provide multilingual and multicultural radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society."<sup>45</sup> The obligation to adhere to the Charter means that SBS is required to focus on providing content that is consistent with its charter objectives, whereas commercial broadcasters do not face this constraint.

<sup>45</sup> *Special Broadcasting Service Act 1991* (Cth) s 6(1).

Much of the content that SBS shows in delivering its Charter commitments would not be viable through advertising alone. Commonwealth funding supports SBS in showing this type of content. Although Charter obligations do present a regulated restraint on SBS's commercial operations, it is not strictly true that these obligations are an automatic or necessary consequence of its government ownership.

#### 4.2.4 Other obligations imposed on SBS and the ABC as public entities

SBS and ABC are corporate Commonwealth entities for the purpose of *the Public Governance, Performance and Accountability Act 2013* (Cth) ('the *PGPA Act*'). As such, the business of each of the public broadcasters differs in a number of ways from a commercial broadcaster.

In the case of SBS, the *SBS Act*, and government ownership more broadly, restrains the behaviour of SBS in a number of other ways:

- SBS is accountable to Parliament and can be compelled to explain decisions around its expenditure and activity at Senate Estimates. Although the commercial broadcasters are accountable to shareholders through the provisions of the *Corporations Act 2001* (Cth), and can be compelled to appear before parliamentary committees, they are not held to the same standard and regularity of parliamentary scrutiny as Commonwealth entities like SBS.
- SBS requires permission from the Commonwealth Finance Minister to take on private debt.<sup>46</sup> This could potentially limit SBS's ability to make longer-term investments in its infrastructure or programming relative to the commercial broadcasters.
- The Board of SBS is appointed by the Government (though it is independent of Government).
- The remuneration of the Managing Director, and non-executive directors, are set by the Remuneration Tribunal.<sup>47</sup> For other staff, SBS negotiates an Enterprise Bargaining Agreement, which covers around 60% of employees; the remaining 40% are employed under common law employment contracts. The Enterprise Bargaining Agreement, and the external salary-setting process for directors, may limit SBS's ability to compete against other large organisations to attract staff.
- SBS is also required to publish de-identified salary and remuneration data for highly paid employees. SBS publishes these details on both its website and in annual reports. This level of transparency acts as a restraint relative to commercial broadcasters that don't face such significant reporting obligations on senior employees.

These restrictions hamper the ability of SBS to attract skilled staff to its organization. SBS cannot compete with the commercial and subscription broadcasters in terms of remuneration for executives and must differentiate itself by developing its brand and emphasising its role as a broadcaster of unique content. The increased accountability for SBS executives also means greater scrutiny from legislative bodies over content and programs, a restriction that executives at commercial and subscription broadcasters are not subject to.

Other obligations for SBS include the Senate Order for Entity Contracts whereby SBS is required twice a year to publish a list of contracts entered into which provide for a consideration to the value of \$100,000 or more and which

(a) have been entered into during the previous 12 months, or

(b) were not fully performed at the end of the period. The estimated cost of complying with this Order in 2016-17 is \$19,350.<sup>48</sup>

Senate Continuing Order No. 5 (also known as the Harradine Order) requires all Australian Government departments and agencies (including SBS) to produce an indexed list of files every six months for tabling before parliament.<sup>49</sup>

<sup>46</sup> Ibid s 60.

<sup>47</sup> Ibid ss 23, 32.

<sup>48</sup> <https://www.sbs.com.au/aboutus/corporate/view/id/1913/h/Senate-Order-Entity-Contracts>

<sup>49</sup> <https://www.ag.gov.au/Publications/Pages/SenateContinuingOrderFileLists.aspx>

## Excerpt 3: Deloitte Access Economics (cont)

Table 4.5 below details average total remuneration for executives at SBS, ABC and the three commercial broadcasters. This, rather simple, analysis does not take into account the complexity and size of the operations of the various organisations - SBS is by far the smallest of the entities in the table (in terms of revenue) - or consider the roles and responsibilities of the executives. However it does demonstrate there is a significant gap in remuneration - SBS executive salaries are less than half that of the lowest commercial competitor.

Table 4.5: Average executive remuneration 2016-17 (\$)

Broadcaster	Average Executive Remuneration
<b>SBS</b>	401,123
<b>ABC</b>	485,162
<b>Seven</b>	845,070
<b>Ten</b>	1,521,421
<b>Nine</b>	1,884,857

Source: Broadcaster annual reports. Note: Ten Network figure from 2015-16. For commercial broadcasters executives are defined as 'key management personnel executives' while for SBS it refers to the ten 'substantive executives' as defined in its annual report. and ABC the 'Leadership Team', in this context, executives are those persons having authority and responsibility for planning, directing and controlling the activities of the entity. This definition from the annual reports largely capture the senior executives in each broadcaster. It does not include board members/non-executive directors.

### 4.2.5 SBS advertising restrictions

SBS is only authorised to broadcast advertisements or sponsorship announcements for 5 minutes per hour of broadcasting compared with commercial broadcasters who can advertise for 13 to 16 minutes per hour depending on the time of day and type of channel.<sup>50</sup> SBS also has a 120 minute daily cap on advertising, below the 350 minutes per day that commercial broadcasters are allowed to devote to advertising.<sup>51</sup> The 5 minute allowance does not include material publicising programs to be broadcast by SBS, or community service announcements.<sup>52</sup> Commercial broadcaster also have exemptions for materials that are not included in their advertising limits including promotion for programs, election announcements, and community service announcements.

In addition, SBS Codes of Practice and Editorial Guidelines place significant limits on program and segment sponsorship which do not apply to commercial FTA broadcasters.

This restriction on advertising limits the potential advertising minutes available on SBS relative to commercial free-to-air broadcasters and thus acts as a source of competitive disadvantage. Some estimates of the cost of this restriction on advertising minutes were considered in a previous proposal to permit SBS to allocate its 120 minutes of advertising to prime time viewing and popular sporting events. The impact on SBS advertising revenue from this proposal was estimated to range from \$7 million to \$37 million across different studies.<sup>53</sup> These figures suggest the cost of these advertising restriction on SBS are material. It is important to note that these estimates reflect the impact of not being able to reallocate existing advertising minutes and as such do not increase the number of advertising minutes available to SBS to the same degree that exists for the commercial broadcasters who are not subject to a 120 minute daily cap.

<sup>50</sup> [http://www.freetv.com.au/media/Code\\_of\\_Practice/Free\\_TV\\_Commercial\\_Television\\_Industry\\_Code\\_of\\_Practice\\_2018.pdf](http://www.freetv.com.au/media/Code_of_Practice/Free_TV_Commercial_Television_Industry_Code_of_Practice_2018.pdf)

<sup>51</sup> <https://www.sbs.com.au/aboutus/news-media-releases/view/id/946/h/SBS-welcomes-and-supports-the-Communications-Legislation-Amendment-SBS-Advertising-Flexibility-and-Other-Measures-Bill-2015>

<sup>53</sup> See the Free TV and SBS submissions to the SBS Advertising Flexibility and Other Measures Bill 2015, the Explanatory Memorandum to Communications Legislation Amendment (SBS Advertising Flexibility) Bill 2017 and the Lewis Efficiency Study, also known as ABC and SBS Efficiency Study.



As a result of the Lewis Efficiency Study, SBS received a funding cut of \$53.7 million over five years<sup>54</sup>, with \$28.5 million of this cut premised on legislation passing to increase the advertising flexibility of SBS based on retaining the 120 minute daily cap. These proposed advertising changes did not proceed, as the legislation did not pass the Senate. Funding that was removed from SBS in anticipation of these changes was reinstated as follows: SBS received \$4.1 million in the 2015-16 Budget; \$6.9 million in the 2016-17 Budget, and \$8.8 million in the 2017-18 Budget. In the 2018-19 Budget \$8.7 million was appropriated for 2018-19 and \$5.9 million in 2019-20.<sup>55</sup>

#### 4.2.6 Corporate income tax exemption

Both the ABC and SBS, as government entities, are not subject to corporate income tax, unlike the commercial broadcasters, which face a headline rate of 30%.

Given that corporate income tax is levied on profits, this is a relatively small benefit to SBS given it does not typically generate large profits. In 2016-17 SBS reported a deficit of \$2.049 million (due to a one-off technical accounting adjustment related to an intangible asset, otherwise a surplus of \$0.636 million would have been recorded). Table 4.7 below shows SBS financial results from 2013-14 to 2016-17. The surpluses made in each year are small relative to commercial broadcasters and would not necessarily attract a significant tax obligation.

Table 4.6: SBS surplus/deficits (\$ million)

Financial Results	2013-14	2014-15	2015-16	2016-17
SBS surplus / (deficit)	0.43	0.345	0.340	(2.049)

Source: SBS Annual Reports

#### 4.3 Commercial FTA broadcasters

The licensing of commercial broadcasting services is set out under Part 4 of the Broadcasting Services Act. These licences will continue to remain in force for five years under sections 45 of the Broadcasting Services Act (with the exception of commercial television satellite licences that will continue in force for 10 years). ACMA will continue to be obliged to renew these licences under section 46 of the Broadcasting Services Act, unless the applicant is identified as unsuitable.<sup>56</sup> In effect, this acts as a de facto perpetual licence with broadcasters viewing the renewal as a virtual certainty. Ten Network noted in its 2016 annual report they have “no reason to believe that the licences will not be renewed in due course”.<sup>57</sup>

In relation to SBS, the most significant regulatory advantage for commercial FTA broadcasters is their greater scope to attract advertising revenue since they are not subject to the same restrictions which apply to SBS. They also have greater scope to focus on showing programs of popular appeal rather than a mix of programming to meet specific Charter obligations (as is required of SBS). SBS advertising revenue in 2016-17 was just 2% of the over \$3 billion for the commercial FTA advertising market (see section 2.4).

<sup>54</sup> <https://www.sbs.com.au/aboutus/news-media-releases/view/id/965/h/Statement-from-SBS-Managing-Director-Michael-Ebeid-regarding-the-Communications-Legislation-Amendment-SBS-Advertising-Flexibility-and-Other-Measures-Bill-2015>

<sup>55</sup> [https://www.sbs.com.au/news/budget-2018-funding-freeze-for-abc-boost-for-sbs\\_2](https://www.sbs.com.au/news/budget-2018-funding-freeze-for-abc-boost-for-sbs_2)

<sup>56</sup> Broadcasting Spectrum Consultation paper <https://www.communications.gov.au/have-your-say/consultation-new-spectrum-legislation>

<sup>57</sup>

<https://images.tenplay.com.au/~media/Corporate%20Site%20Media/Files/Annual%20Reports/2016%20Annual%20Report.pdf>

## Excerpt 3: Deloitte Access Economics (cont)

The prohibition on 4<sup>th</sup> commercial broadcast license and anti-siphoning legislation benefits both the commercial and national broadcasters but in practice benefits commercial FTAs to a much greater extent because of their scope to raise advertising revenues and bid for premium content. Local content rules constitute a regulatory disadvantage to commercial broadcasters. However, only some sub-quotas of these rules are a disadvantage since many forms of Australian content is popular. All commercial broadcasters have far surpassed the overall quotas for Australian content in recent years (see Appendix A for further discussion on local content rules) but often show close to the minimum sub-quota for first release drama, children’s programs and documentaries. These latter categories would appear to place some regulatory burdens on commercial FTA broadcasters.

Other advantages such as access to broadcasting spectrum are common to both commercial FTA broadcasters and the national broadcasters (further discussion on the valuation of spectrum is detailed in Appendix A). Regulatory restraints around media ownership and licence fees and charges for use of spectrum have eased substantially over the last five years, vastly improving the relative competitive position of the commercial FTA broadcasters.

Further details on assistance for television production, the digital switchover and captioning requirements are available in sections Appendix A.

Table 4.7 sets out the estimated value of regulatory support provided to commercial broadcasters and Table 4.8 sets out other forms of regulatory advantages and disadvantages which apply to the commercial FTA broadcasters but are not explicitly valued in this report.

Table 4.7: Value of regulatory support/funding to commercial broadcasters (\$ million)

	2017-18	Change since 2013-14
Access to spectrum	558.8	No estimate provided
Prohibition on 4 <sup>th</sup> commercial licence <sup>^</sup>	1680	No estimate provided
Licence fee/spectrum pricing*	40 (expected payment to government)	104.6 (72.3%)
<b>Total</b>	<b>2,199</b>	
Digital switchover, Screen Australia funding, tax offsets	Funding accrues to multiple broadcast sectors	See Appendix A

Source: Deloitte Access Economics

Note: <sup>^</sup> Book value of licence fees (see section 4.3.3 for further discussion). \*Spectrum pricing replaced licence fees that were abolished in 2016-17.

Table 4.8: Forms of regulatory advantage and disadvantage not valued

Regulatory advantage not valued	Regulatory disadvantage not valued
Anti-siphoning legislation	Local Content Rules
Prohibition on 4 <sup>th</sup> commercial licence	Captioning Requirements
	Media ownership rules

Source: Deloitte Access Economics

#### 4.3.2 Media ownership rules

The general assumption that markets operate most efficiently without government intervention means that laws that restrict media ownership distort the allocation of resources in the broadcasting market and limit the scope for expansion by commercial FTA broadcasters through mergers and acquisitions. At the same time it should be noted that were media ownership rules removed, mergers and acquisitions may still be blocked by the ACCC if they have the effect, or would be likely to have the effect, of substantially lessening competition.

In principle, the presence of media ownership laws that restrict ownership could benefit all broadcasters to the extent that they restrict competition. However, the ability of SBS to benefit from media ownership rules is limited by advertising restrictions. The restriction on competition limits the quantity of advertising available and drives up the price, benefiting commercial broadcasters more than SBS.

In October 2017 the Commonwealth Parliament passed the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*.<sup>58</sup> Under the reforms, the Government repealed two media control and ownership rules in the Broadcasting Services Act 1992 that currently prevent a person from controlling:

- Commercial television licences that collectively reach in excess of 75 per cent of the Australian population (the '75 per cent audience reach rule'); and
- More than two of the three regulated forms of media (commercial radio, commercial TV and associated newspapers) in the one commercial radio licence area (the '2 out of 3 rule').

Maintained is the 'one-to-a-market' rule in which a person, either in their own right or as a director of one or more companies, must not be able to exercise control of more than one commercial television broadcasting licence in a licence area.

An indication of the value to the commercial broadcasters can be seen in the increase in market value of the broadcasters following the announcement by the government to reform media the media laws. When the market opened on Monday 8<sup>th</sup> May following the announcement the collective value of the three commercial broadcasters increased approximately \$117 million,<sup>59</sup> with this increase in market value largely reflecting the news that media ownership laws will be lifted.

In addition to the above changes, local content rules were also modified (see Appendix A). More restrictions on gambling advertising were also introduced during live sports programs on commercial and subscription TV (and SBS).<sup>60</sup> Gambling advertisements will not be able to be shown from five minutes before a live sports event commences, during the event and for five minutes after the event has concluded. The restrictions will apply between 5.00am and 8.30pm.

#### 4.3.3 Prohibition on entry of 4<sup>th</sup> commercial broadcaster

Section 37A of the Broadcasting Services Act states that ACMA must ensure that the number of commercial television broadcasting licences that:

- have the same licence area; and
- are broadcasting services bands licences;

does not exceed three.<sup>61</sup>

One way of valuing the restriction of entry of a 4<sup>th</sup> commercial broadcaster would be to use the book value of licenses held by the commercial broadcasters in their annual report. The book values reported in annual reports of commercial broadcasters provide an estimate of how much a new license would sell for.

Table 4.10 below shows the total book value reported by each of the three commercial broadcaster from 2013-14 to 2016-17. The value of the license fee could also include the automatic renewal of the license by ACMA.

<sup>58</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5907](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5907)

<sup>59</sup> <https://mumbrella.com.au/media-law-reforms-gift-quarter-billion-dollars-value-broadcast-businesses-443344>

<sup>60</sup> [https://www.communications.gov.au/sites/g/files/net301/f/factsheet\\_gambling\\_advertising.pdf](https://www.communications.gov.au/sites/g/files/net301/f/factsheet_gambling_advertising.pdf)

<sup>61</sup> <https://www.legislation.gov.au/Details/C2017C00201>

## Excerpt 3: Deloitte Access Economics (cont)

These valuations are not an ideal way of estimating the value of the prohibition on a 4<sup>th</sup> commercial broadcaster. They include the value of protection from the entry of a fourth network, the value of a broadcaster's brand and the value of the anti-siphoning scheme.

Overall, these book value provide a useful guide for understanding the value of the prohibition on a fourth television license but are likely to overstate the value to the commercial broadcasters because they capture many other aspects of the broadcasters' business. The book value of television licences are shown in Table 4.9 below.

Table 4.9: Book value of television licence (\$ million)

Broadcaster	2013-14	2014-15	2015-16	2016-17	% change
Nine	593.4	493.9	477.8	477.8	-19.5
Seven	2,300	1,371	1,371	938.3	-59.2
Ten	732.9	481.7	346.5	132.0	-82.0

Source: Broadcaster annual reports. Note: Ten Network includes only first half of FY2016-17 because of the acquisition by CBS.

It should be noted that the SBS also benefits from the prohibition of any 4th commercial broadcaster. However, the cost to SBS of the entry of another commercial broadcaster is likely to be significantly smaller than for commercial broadcasters because of the advertising restrictions and the nature of the content shown. In particular, the content shown on SBS can differ from that of commercial broadcasters due to the nature of the Charter obligations.

The entry of another broadcaster will also increase competition for content and to lead to a more diverse range of programming being offered, allowing advertisers to more precisely target particular demographics and would also, most likely, lead to the cost of advertising time falling as the quantity available increases.

The value to SBS of the prohibition is estimated here to be in proportion to the value of the advertising market they hold. This equates to around 2% of the total book value of television licences.

### 4.3.4 Anti-siphoning legislation

The anti-siphoning scheme aims to ensure that sporting events of cultural or national significance remain freely available to all Australian audiences. It prevents STV broadcasters from acquiring the rights to sporting or cultural events placed on the anti-siphoning list before FTA broadcasters have an opportunity to purchase the rights.

Access Economics examined the economic benefits of moving to a strict 'use it or lose it' scenario for sporting events on the anti-siphoning list in 2008. The strict 'use it or lose it' scenario considered was one under which all events which are not broadcast nationally within an hour of commencing would be available to STV. A move to a strict 'use it or lose it' model was found to increase revenue for both STV broadcasters and sporting codes. The net increase in revenue was found to be \$381 million or \$462 million in 2017 dollars. While further increases in revenue may arise from removing the anti-siphoning list altogether, these are likely to be small in comparison to implementing a strict 'use it or lose it' model given that the wider audience enjoyed by FTA broadcasters means they are likely to have higher valuations of many of the premier sporting events which they currently choose to broadcast.

Under the recent *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017* the government has reformed the anti-siphoning scheme. These changes to the scheme include:

- Reducing the number of events on the list to foster competition between FTA and STV broadcasters
- Allowing FTA broadcasters to televise the events through their digital channels in recognition that these channels are now widely available following the completion of digital television switchover in 2013.
- Increased the time out from an event that events are automatically removed from the anti-siphoning list from 12 to 26 weeks.<sup>62</sup>

These changes effectively move current policy settings closer to a 'use it or lose it' model. Nonetheless, the retention of the ASL still provides an advantage to commercial FTA broadcasters relative to STV by allowing them to gain rights for many sporting events without facing competition from STV (noting that for some events FTA broadcasters may still be the highest bidder).

Some of the benefit from the anti-siphoning scheme accrues to SBS, as they are able to bid for and broadcast certain events (e.g. Football World Cup) by facing less competition. Although given the restrictions on advertising minutes for SBS, they likely benefit significantly less than commercial broadcasters from the anti-siphoning list. Commercial broadcasters can generally bid more aggressively for content knowing they will receive significant sums from advertising revenue for premium sporting events. Recent changes to the anti-siphoning list have removed World Cup matches not involving Australia, other than the final and FIFA World Cup Qualifiers involving Australia, played outside of Australia.<sup>63</sup> This change weakens any advantage held by SBS relative to STV broadcasters as a result of the anti-siphoning list.

#### **4.3.5 License fee and rebates**

Until 2012-13, the Australian Communication and Media Authority (ACMA) collected broadcasting licence fees from commercial radio and television broadcasting-licence holders under the Television Licence Fees Act 1964 (TLF Act) and the Radio Licence Fees Act 1964. Fees were calculated as a percentage of the gross earnings of the licence-holders, less any rebates that apply. On 28 March 2013, the TLF Amendment Act 2013 introduced amendments to the TLF Act by permanently reducing the annual licence fee payable by a commercial television broadcasting licensee by 50 per cent, (to a maximum of 4.5 per cent of their gross earnings) and the licence fee rebate was abolished.

The Television Licence Fees Amendment Regulations 2017 removed the licence fees payable by Australian commercial broadcasters for the 2016–17 financial year. The Government has replaced the licence fees payable by commercial broadcasters with a price for the use of radiofrequency spectrum for commercial broadcasting. The government will provide some transitional support to commercial broadcasters to help with the transition to spectrum pricing and compensate them for any additional fees incurred.

Australian Communications and Media Authority (ACMA) also collects revenue through the Spectrum Licence Tax. This is a tax on commercial broadcasters to recover the indirect costs of spectrum management activities and to support the efficient use of spectrum. The spectrum licence tax is calculated based on the bandwidth and the population covered in a licence.

After removing licence fees and instituting spectrum pricing the vast majority of broadcasters will see significant reductions in fees. However, with the change to a per transmitter approach rather than revenue based charge, a small number of broadcasters in regional areas will see an increase in fees. To provide these broadcasters with time to adjust to the new fee structure, the Government will provide a transitional support package over five years. This package will fully compensate these broadcasters for any additional fees incurred

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<sup>62</sup> Amending the anti-siphoning scheme:

<https://www.communications.gov.au/documents/amending-anti-siphoning-scheme>

<sup>63</sup> [https://www.communications.gov.au/sites/g/files/net301/f/factsheet\\_anti-siphoning\\_.pdf](https://www.communications.gov.au/sites/g/files/net301/f/factsheet_anti-siphoning_.pdf)

## Excerpt 3: Deloitte Access Economics (cont)

Table 4.10 below sets out the total contribution paid by FTA broadcasters in the form of licence fees and broadcast spectrum pricing over time. From 2013-14 to 2017-18 television licence fees were \$401.9 million. From 2016-17 onward this amount was zero and was replaced in 2017-18 by directly charging for spectrum used. Lost revenue from abolishing licence fees and replacing with spectrum pricing was \$126.9 million in 2016-17. The spectrum licence tax was \$0.77 million in 2016-17. The total spectrum pricing that broadcasters will pay in 2017-18 is expected to be around \$40 million.<sup>64</sup>

Table 4.10: Licence fees and spectrum pricing (\$ million)

Support type	2013-14	2014-15	2015-16	2016-17	2017-18	% Change
Television licence fee	144.6	152.8	106.8	0	0	-100
Spectrum licence tax	0.32	0.37	0.70	0.77	n/a	55
Spectrum Pricing*	0	0	0	0	40	n/a
<b>Total</b>	<b>144.9</b>	<b>153.2</b>	<b>107.5</b>	<b>0.77</b>	<b>40</b>	<b>-72</b>

Source: ACMA Annual Reports and DCA PBS.

\* Replaced licence fees after they were abolished in 2016-17.

### 4.3.6 Local content obligations

Deloitte Access Economics was not able to identify any information on the net cost of meeting the Australian content standard for commercial FTA broadcasters. Such an analysis would need to consider the cost of making alternative programming and the difference in revenue that alternative programming (in the absence of an Australian content standard) would generate. Data from ACMA<sup>65</sup> indicates that in 2017, at least one of the commercial FTA broadcasters appeared to not substantially exceed their quotas (some of which are based on requirements over three years) in the areas of: first release Australian drama, first release Australian documentary, first release Australian children's drama and both first release and all Australian children's and preschool programs. This suggests that these are potential areas that may not be provided to the same extent without Australian content standards (see Appendix A for further discussion on Australian content obligations).

Commercial FTA broadcasters spent \$158.3 million in Australian drama, children's programs and documentaries in 2016-17, spending a total of \$126.3 million on Australian drama.<sup>66</sup> However, some of this expenditure may be for second release programming.

One method of obtaining a high-level estimate of the additional production of costs of meeting obligations for first release adult and children's dramas and documentaries is to compare the average production cost per hour of these categories relative to a base category such as light entertainment and variety. The ABS released data on the costs per hour of the production of television programs from 2015-16 which can be used for this purpose.<sup>67</sup> The ABS data shows the average production cost of drama per hour to be \$645,700 and the average cost of producing an hour of children's drama to be \$476,100. The average cost per hour of a documentary was \$230,000 compared to \$91,900 for light entertainment and variety.

Based on the average format score for drama per hour for the commercial FTAs in drama in 2017,<sup>68</sup> to meet their Australian content obligations the commercial FTAs would need to provide 133 hours of first

<sup>64</sup> <http://mitchfield.com/Media/MediaReleases/tabid/70/articleType/ArticleView/articleId/1352/Major-reforms-to-support-Australian-broadcasters.aspx>

<sup>65</sup> ACMA, 'Compliance with Australian Content Standard and Children's Television Standard', <https://www.acma.gov.au/-/media/Community-Broadcasting-and-Safeguards/Information/pdf/Compliance-with-Australian-Content-Standard-and-Childrens-Television-Standards--2017-pdf.pdf?la=en>.

<sup>66</sup> ACMA (2018), 'Program Expenditure Information 2016-17: Aggregated data for commercial television'.

<sup>67</sup> ABS 2017, 'Film, Television and Digital Games, Australia, 2015-16', Cat. No. 8679.0.

<sup>68</sup> ACMA, 'Compliance with Australian Content Standard and Children's Television Standard', <https://www.acma.gov.au/-/media/Community-Broadcasting-and-Safeguards/Information/pdf/Compliance-with-Australian-Content-Standard-and-Childrens-Television-Standards--2017-pdf.pdf?la=en>.

release drama (on average), 20 hours of first release documentaries and 25 hours of first release children's drama. If the production costs for each category among commercial FTA broadcasters were in line with the ABS figures, then the production costs associated with meeting their Australian content requirements for adult and children's drama and documentaries would be \$65 million more than the cost of producing an equivalent number of hours of light entertainment.

In reality, to properly cost the impact of Australian and local content obligations more detailed information would be needed on the underlying costs of production for each genre and the expected production costs of alternative programs that would otherwise be provided. This is still likely to underestimate the actual cost of meeting content obligations because many forms of content such as children's content are likely to be less popular and reduce advertising revenue relative to alternative programs. This point was noted in a submission by Free TV to the Convergence Review, which noted that the production costs for meeting Australian content standards set out in a submission by Screen Australia substantially underestimated the impact on advertising revenues.<sup>69</sup>

More recent Free TV submissions have noted that children's consumption of commercial FTA programming has changed over the past decade with children shifting towards viewing general family entertainment and major events from traditional children's programming.<sup>70</sup> Children also mainly watch children's TV only on-demand making Australian sub quotas less relevant.<sup>71</sup>

#### 4.4 Community broadcasters

Community television (CTV) operators do not pay a licence fee to the Government to access broadcasting spectrum. CTV operators only pay a small administrative fee to the Australian Communications and Media Authority for the allocation of their transmitter licences. CTV operators are restricted to 7 minutes of sponsorship announcements per hour to be aired before or after programs or during natural program breaks.

In 2014 the government announced that it was transitioning community TV to internet only distribution. Community television was broadcast on the 'sixth channel' spectrum in the five state mainland capital cities. With the completion of the digital switchover, advances in compression standards have allowed broadcasters to use their existing spectrum much more efficiently to deliver more channels. To allow for this transition to the MPEG-4 compression technology the Government freed up the 'sixth channel' to assist in the testing and migration to this more efficient technology.

Community broadcasters were to have their licences extended until December 31 2015.<sup>72</sup> While many community TV stations have transitioned online, some have had their licence temporality extended with channels in Melbourne, Adelaide and Perth given a reprieve until 30 June 2020 when they will have to vacate terrestrial spectrum.<sup>73</sup>

The Community Broadcasting Program provides funds to assist community broadcasters, including with the delivery of community radio services. According to the DCA budget, total funding in 2017-18 is \$19.6 million. This represents a significant boost from the previous year and reverses a declining trend. This boost was directed towards the community radio sector to support digital radio services and one-off spectrum reorganisation costs for analogue radio services. \$1.9 million will be allocated in 2017-18 and \$2 million in 2018-19 to assist the community radio sector with the costs of digital radio broadcasting, including for the planned expansion of digital radio to permanent services in Hobart, Canberra, Darwin and the Gold Coast.

<sup>69</sup> Free TV Australia (2012), 'Submission by Free TV Australia Limited to the Convergence Review – Interim Report'.

<sup>70</sup> <https://www.communications.gov.au/sites/g/files/net301/f/submissions/freetv-australia-childrens-content.pdf>

<sup>71</sup> <https://www.communications.gov.au/sites/g/files/net301/f/submissions/freetv-australia.pdf>

<sup>72</sup> <https://www.malcolmturnbull.com.au/media/the-future-of-community-tv>

<sup>73</sup> [http://www.minister.communications.gov.au/mitch\\_fifield/news/community\\_television\\_broadcasters\\_granted\\_two\\_year\\_licence\\_extension#.WxnSK2cq7Y](http://www.minister.communications.gov.au/mitch_fifield/news/community_television_broadcasters_granted_two_year_licence_extension#.WxnSK2cq7Y)



## Excerpt 3: Deloitte Access Economics (cont)

The value of regulatory support and key forms of regulatory advantages and disadvantages for community broadcasters are set out in Table 4.11 below.

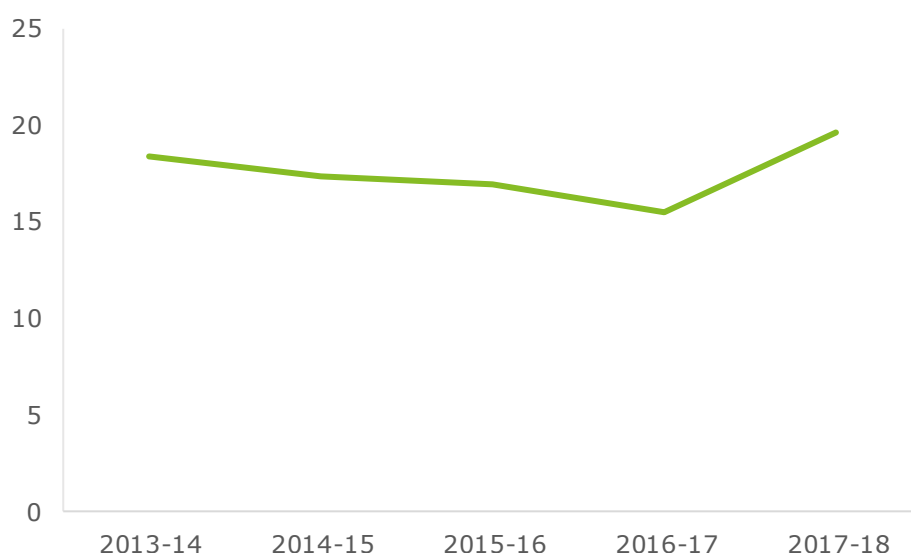
Table 4.11: Value of regulatory support/funding to community broadcasters (\$ million)

	2017-18	Change since 2013-14
Government funding	19.6	6.7%
Screen Australia funding, tax offsets	Funding accrues to multiple broadcast sectors	See Appendix

Source: Deloitte Access Economics

The total funding for community broadcasters from 2013-14 to 2017-18 was \$87.7 million as shown in Chart 4.2.<sup>74</sup>

Chart 4.2: Community Broadcasting Program (\$ million)



Source: DCA PBS.

### 4.5 Subscription TV

Subscription television broadcasting services are licensed under Part 7 of the Broadcasting Services Act. Services provided under these licences have generally not used BSB spectrum as some subscription television services are delivered by way of satellite and others by fixed-line cables. Table 4.12 sets out current government funding for subscription TV.

Fox Sports has received funding to support television and online coverage of sports that receive low or no broadcast exposure, including women's sports and those that have high levels of community participation and involvement. This 'Supporting Underrepresented Sports' program was announced in the 2017-18 budget and will have total funding of \$30 million over four years.

<sup>74</sup>

[http://www.minister.communications.gov.au/mitch\\_fifield/news/new\\_funding\\_for\\_community\\_radio\\_broadcasters#.Wvk-OoiFNhE](http://www.minister.communications.gov.au/mitch_fifield/news/new_funding_for_community_radio_broadcasters#.Wvk-OoiFNhE)



Table 4.12: Value of regulatory support/funding to Subscription Broadcasters (\$ million)

Support	2017-18	Change since 2013-14
Government funding <sup>^</sup>	7.5	No support in FY14
Screen Australia funding, tax offsets	Funding accrues to multiple broadcast sectors	See Appendix

Source: Deloitte Access Economics

<sup>^</sup> This is the funding for underrepresented sports which will equal \$30 million over the four years from 2017-18

Table 4.13 sets out a range of regulatory advantages and disadvantages applying to STV which are not explicitly valued in this report.

Table 4.13: Forms of regulatory advantage and disadvantage to Subscription TV not valued

Regulatory advantage not valued	Regulatory disadvantage not valued
Media ownership rules	Captioning requirements
Prohibition on 4 <sup>th</sup> commercial licence	Local content rules
	Anti-siphoning legislation

Source: Deloitte Access Economics

STV also received benefits from Screen Australia and state and territory screen organisation funding. While like FTA broadcasters, STV broadcasters face significant restrictions on what funding they can receive directly from Screen Australia, though they do gain indirectly through grants provided to production companies who sell their productions to STV providers. STV providers also benefit from the ability to retransmit commercial FTA channels.

There are several regulatory disadvantages to the STV sector including certain local content rules, captioning requirements and the anti-siphoning scheme. Subscription television broadcasters are subject to Australian content expenditure obligations: at least 10% of program expenditure for subscription television drama channels must be on new Australian drama.<sup>75</sup>

Anti-siphoning restricts the content they can bid on, though recent reforms have made the terms of bidding more favourable for STV broadcasters (see section 4.3.4). It should be noted that recently Fox Sports and Channel 7 won the Cricket Australia broadcast rights for six years for \$1.182 billion.<sup>76</sup> Events previously broadcast on FTA, including Men's T20, Men's ODIs and 16 Big Bash League matches will be broadcast exclusively on STV.

There is no restriction on advertising minutes for subscription television, though they are subject to a licence condition that requires subscription fees to be their main revenue source.<sup>77</sup>

<sup>75</sup> *Broadcasting Services Act 1992* (Cth) Division 2A.

<sup>76</sup> <https://www.cricket.com.au/news/cricket-australia-broadcast-deal-media-channel-seven-fox-sports-tv-guide-how-watch-bbl-television/2018-04-13>

<sup>77</sup> *Broadcasting Services Act 1992* (Cth) CI 10(2)(b) of Sch 2 to the Act.

# 5 Summary of future impacts on SBS

SBS continues to evolve its services to reflect social, competitive and technological change within the regulatory environment within which it operates. In addition to this Inquiry, over the next 12 months SBS's operations are likely to be impacted by the following:

## *2018 Efficiency Study*

The Government has announced an efficiency study of the public broadcasters. SBS will participate in this review as it has previous reviews which have demonstrated its effectiveness and efficiency.

## *Broadcasting spectrum*

Progress is expected on the development of a new legislative framework governing the allocation and management of radio frequency spectrum, replacing the *Radiocommunications Act 1992*. A key element will be a simpler licensing scheme, which will involve broadcasters, including SBS, transitioning to new licence types over time.

## *Restrictions on gambling advertising*

In its May 2017 media reform package, the Government announced further restrictions on gambling advertising and promotions during live sports programs, which are intended to reduce the exposure of children to gambling advertisements. SBS has amended its Codes to restrict gambling advertising during live sporting events during specified time periods on all of its platforms in accordance with Government policy. Since 30 March 2018, audiences have been able to lodge complaints directly with SBS about gambling advertising on SBS TV, radio and online services under the new rules.

## *Access to sports rights (anti-siphoning scheme)*

The anti-siphoning scheme ensures that broadcast rights to sporting events of national and cultural significance are available to free-to-air television before subscription television. Subscription broadcasters are prevented from acquiring the rights to events placed on the anti-siphoning list—either until rights are acquired by a free-to-air broadcaster (such as SBS), or are automatically removed from the list prior to the event commencing.

In May 2017, the Government announced that it would:

- reduce the scope of the list to encourage increased competition between subscription and free-to-air broadcasters;
- remove a rule that prevents free-to-air broadcasters from televising events on their digital multi-channels only; and
- increase the time out from broadcast that events will be automatically removed from the list—from 12 to 26 weeks.

If the announced reforms are implemented during the reporting period, SBS will be able to premiere listed events on digital multi-channels such as SBS VICELAND (rather than only on the main SBS channel). However, removal of certain events from the list, and earlier automatic de-listing of events, may impact SBS's negotiating position for those events.

## *Support measures for Australian content*

During 2017–18, the Department of Communications and the Arts, the Australian Communications and Media Authority, and Screen Australia reviewed support measures in place for the production and delivery of Australian and children's screen content. The report has not yet been published. Any reforms arising from the review are likely to directly affect SBS and independent producers commissioned by SBS, as well as the competitive environment for Australian content.

## 6 Conclusion

Like all domestic media operators, SBS anticipates that the external market environment within which it operates will continue to change significantly.

As a small operator, platform content distribution is crucial to SBS's success in audience content discovery and consumption. SBS will need to further its investment in digital media content, with a particular focus on SBS On Demand as a core distribution platform for distinctive content with an enhanced user experience. Given SBS has a faster declining share of the 25–54 audience demographic than its commercial counterparts, cross-platform content is critical.

SBS will also need to continue to commit to acquiring or commissioning even more distinctive content to appeal to, be relevant to, and inspire the communities that it seeks to serve and focus on content distribution strategies, including social media to improve its reach and engagement, particularly with younger audiences.

The ability to promote and capitalise on flagship SBS programming events which captivate audiences will also play an increasingly important role in defining SBS in a highly competitive market. SBS will need to continue to focus on SBS programming events to further strengthen the relationship it has with its audiences.

It is critical SBS has capacity to continue to invest in its digital advertising capabilities given the growing shift to digital content, including via SBS On Demand and other digital properties, to allow optimal data capture to maximise the value of online content to all Australian audiences.

It is also important that SBS is able to continue to build on existing and new arrangements to ensure consistent growth and value of advertising inventory across all platforms. SBS must be equipped to address the external forces putting upward pressure on its largest cost areas (content and employees) given there will be even greater emphasis on ensuring SBS's already lean support and back-office functions are delivered as effectively and efficiently as possible.

This submission demonstrates that SBS has in place enduring policies to deliver on the requirements of the SBS Charter and service the Australian community with diverse media. No evidence has been presented to indicate that SBS is not operating consistently with competitive neutrality principles. There is however evidence to show that the marginal cost of new activities is being covered by marginal revenue, thereby avoiding potential advantage flowing from SBS's government ownership. And there is significant evidence to demonstrate that as a result of limitations on its advertising inventory, SBS is not undercutting the advertising market, nor is it able to outbid and therefore drive up costs for content, given its minuscule size and content budgets.

As the Terms of Reference for the Inquiry notes - competitive neutrality principles do not imply that government businesses cannot be successful in competition with private businesses. The analysis and information provided in this submission clearly demonstrates that when that SBS does compete, it does so from a constrained position, rather than an unfair position as a result to its government ownership. In summary, SBS is not able to distort the media market.

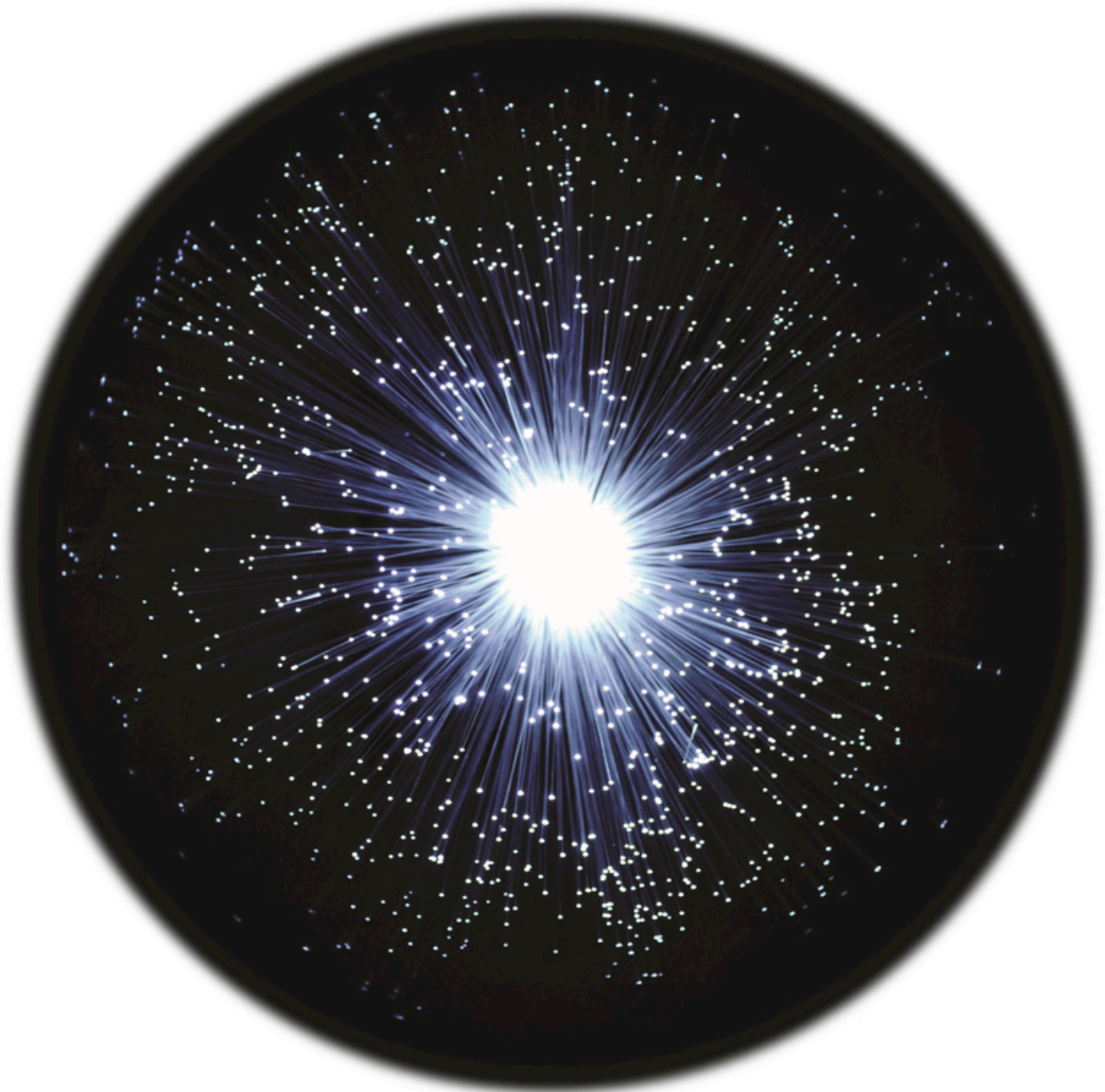
Having had regards to the analysis and framework developed by Deloitte Access Economics, SBS is confident it is meeting competitive neutrality principles.

As such, given the extensive competitive and regulatory pressures SBS is already facing, any new policy settings emerging from this Inquiry that detract from the ability of SBS to conduct itself sustainably in the domestic media market also puts at risk SBS's capacity to meet its Charter.

Further, any processes which restrict SBS's legislatively empowered ability to compete with other media providers to connect with multicultural Australia would weaken the role of SBS. A weaker SBS is less able to positively contribute to Australia's social cohesion, as was intended when it was founded by the Australian Parliament more than 40 years ago.

SBS - Report on aspects of Competitive Neutrality

# **Deloitte.** Access Economics



**SBS – Report on aspects of  
Competitive Neutrality**

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## Glossary

<b>Acronym</b>	<b>Full name</b>
ABC	Australian Broadcasting Corporation
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
AGCNCO	Australian Government Competitive Neutrality Complaints Office
AVOD	Advertising video on demand
BBC	British Broadcasting Corporation
CALD	Culturally and linguistically diverse
CSO	Community Service Obligation
CTV	Community television
DCA	Department of Communications and the Arts
ENG	Electronic News Gathering
FECCA	Federation of Ethnic Communities' Councils of Australia
FTA	Free-To-Air
LOTE	Languages other than English
NITV	National Indigenous Television
OECD	Organization for Economic Co-operation and Development
PBS	Portfolio Budget Statement
PDV	Post, Digital and Visual Effects
QAPE	Qualifying Australian Production Expenditure
REP	Regional Equalisation Plan
SBS	Special Broadcasting Service
SMI	Standard Media Index
STV	Subscription television
SVOD	Subscription video on demand
TVOD	Transactional video on demand
UHF	Ultra high frequency
VAST	Viewer Assisted Satellite Television
VOD	Video on Demand

# Executive summary

## SBS and the media market

The Australian media market is changing at a breathtaking pace. In recent years there has been a marked shift away from watching live broadcast TV towards consuming content online and on demand – what consumers want, when they want it and on a device of their choice.

This shift has been driven by the growth of on demand content delivery platforms such as Netflix, search engine giants like Google and social media platforms such as Facebook.

Against this broader market context, SBS is the smallest player in the free-to-air (FTA) television market with a current prime time market share of 7.3%. While its market share increased with the introduction of SBS VICELAND and Food Network, both attract around only 1% of the overall prime time viewing market, while the market share of NITV is around 0.2%.

In terms of advertising revenue, SBS currently has the smallest share of the declining FTA television advertising market (approximately 2%) and a much smaller share of the overall FTA television and online advertising market. Its influence on competitive outcomes in terms of viewership and advertising is commensurately low.

## Application of the competitive neutrality principles

The Australian Government is conducting an inquiry into the competitive neutrality of Australia's national broadcasters, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) ('the Inquiry'). Competitive neutrality is the principle that government entities participating in competitive markets should not be advantaged by virtue of their government ownership.

Deloitte Access Economics has been commissioned by SBS to consider aspects of the application of competitive neutrality to its operations as part of this Inquiry. In doing so it is important to first consider the market that SBS operates in, and SBS's role in that market.

Australia's Competition Principles Agreement defines competitive neutrality in the following terms:

*The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.<sup>1</sup>*

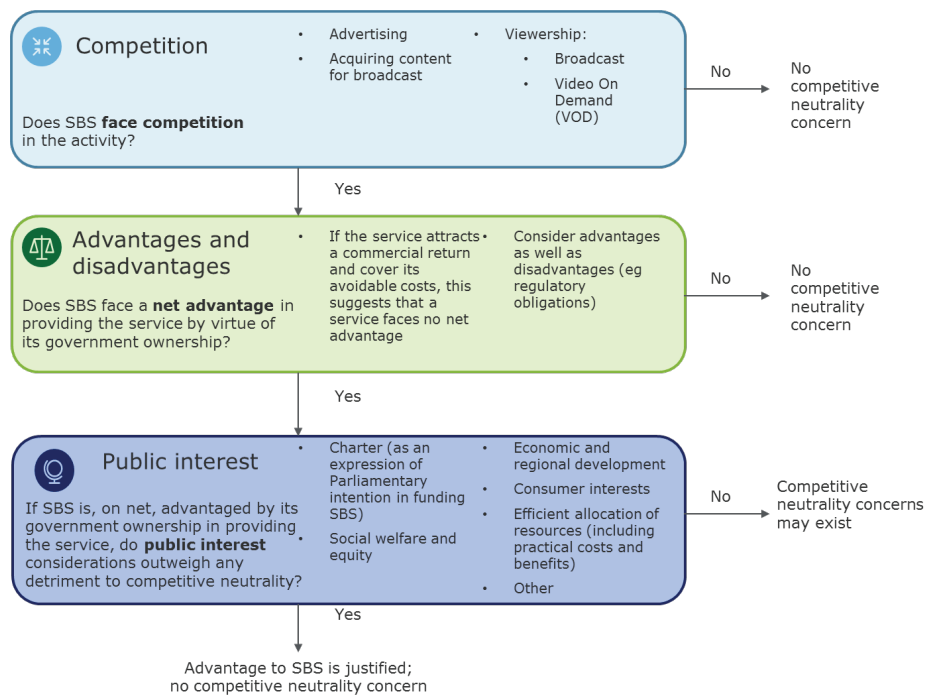
In order to demonstrate that competitive neutrality principles have been breached, it would be necessary to show that:

- SBS faces competition in an activity
- SBS has a net advantage in providing a service as a result of its government ownership
- Public interest considerations do not outweigh any detriment to competitive neutrality

---

<sup>1</sup> Competition Principles Agreement 1995 cl 3(1).

# Appendices Appedix 1.1 (cont)



It is important that competitive neutrality be considered in the context of how SBS achieve its objectives through a suite of content and platforms. This should recognise the interdependencies between content and platforms and audience pathways rather than focusing on a narrow assessment of individual programs on single platforms.

The net benefit to the national broadcasters as a result of their government ownership or other regulatory advantages, to the extent any exists, is unclear and difficult to test empirically. SBS has an advantage as a result of its government funding, but other factors (e.g. limitations on its advertising) restrict its ability to fully compete in the market.

A large proportion of SBS content, such as that provided in Languages other than English (LOTE) and culturally and linguistically diverse (CALD) material, is widely considered to be in the public interest, although it is important that the Inquiry clearly define this term.

Broader appeal content can directly support the public interest by increasing consumer choice. It can also indirectly support the public interest through providing funding for programs which have less broad appeal, by ensuring cost-efficient delivery of content and allowing cross-promotion of other material (e.g. CALD and LOTE programming) to attract a wider audience and help achieve the objectives of the SBS Charter.

At the same time, it is important to separately consider the more commercial activities undertaken by SBS in terms of impact they have on competition and outcomes in the market as well as the role that they play in supporting this 'indirect public interest'. Some channels and platforms SBS offers such as Food Network, SBS VICELAND and SBS On Demand are operating on a commercial basis and covering their avoidable costs without relying on government funding, while others are more reliant on government funding to support their activities. We note that the Productivity Commission indicated that a government business will be compliant with competitive neutrality principles "if its prices for commercial output exceed the avoidable cost of supplying the service".<sup>2</sup>

<sup>2</sup> Commonwealth Competitive Neutrality Complaints Office (2000). *Investigation No. 4: ABC Production Facilities*. Online: <http://www.pc.gov.au/inquiries/completed/abc-production/report4.pdf>

Although the Inquiry raises the issue, and while SBS's Charter requires it to contribute to the diversity of Australian television services it is worth noting there are no competitive neutrality requirements for national broadcasters to balance 'competing' in the market and 'complementing' the market.

Any examination of competitive neutrality should also consider whether there has been a material detriment to competitive outcomes. SBS has a very small share of viewership and advertising revenue, and its ability to influence competitive outcomes is commensurately small given its size.

Our views on competitive neutrality in respect of SBS's key services are as follows:

### **SBS Main channel**

SBS main channel, as per its Charter, provides public interest benefits by broadcasting a large proportion of CALD material as well as content of broader appeal. At the same time, its relatively small market share means that any impact on competition is likely to be low. On balance, based on our analysis of information available, any impact on competition is likely to be outweighed by public interest benefits. As such, SBS main channel as a whole is unlikely to be breaching competitive neutrality principles.

### **SBS VICELAND**

SBS VICELAND is forecast to cover its avoidable costs in 2017-18 (it has not done so in the past two years, largely due to costs associated with A-league coverage). Further, SBS VICELAND's market share is smaller than that of the SBS main channel, at 1.2% of prime-time audienceship, and only slightly higher among the desirable 25-54 market at 1.5%, and hence its impact competition in the market place is likely to be small. There is a strong case that it is complying with competitive neutrality principles.

### **Food Network**

As with SBS VICELAND, there is a strong case that the Food Network is complying with competitive neutrality principles, noting that it provides a financial return to SBS.

### **SBS On Demand**

SBS On Demand, like the SBS main channel provides public interest benefits by broadcasting a large proportion of CALD material as well as content of broader appeal and in so doing helps fulfil SBS's charter requirement to provide digital media services to the public. SBS On Demand is also projected to recover its incremental costs in 2017-18 indicating that it currently operates largely independently of government funding. On balance, based on our analysis of information available, any adverse impact of SBS on Demand on competition in the market is likely to be outweighed by public interest benefits. As such, SBS On Demand as a whole is unlikely to be breaching competitive neutrality principles.

# 1 Introduction

In September 2017, the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017* (Cth) ('the Bill') and the *Commercial Broadcasting (Tax) Bill 2017* (Cth) passed the Senate of the Australian Parliament. These Bills seek to deregulate the Australian media industry, by:

- reducing the restrictions around the types of media which can be owned by a single company,
- abolishing the rule that no single commercial television broadcaster can reach more than 75 per cent of the Australian population, and
- replacing revenue-based television broadcast licence fees with an interim spectrum charge (which will be reviewed after five years).

Outside of the Bill, separate agreements were made to conduct an inquiry into the competitive neutrality of Australia's national broadcasters, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) ('the Inquiry').

Competitive neutrality is the principle that government entities participating in competitive markets should not be advantaged by virtue of their government ownership. Deloitte Access Economics has been commissioned by SBS to consider aspects of the application of competitive neutrality to its operations as part of this Inquiry.

The terms of reference for the Inquiry cover a range of issues:

- the application of competitive neutrality principles to the business activities of ABC and SBS, including operational decision making and risk management;
- the cost structures of business activities;
- the regulatory obligations for ABC and SBS compared to those for private sector operators, insofar as it relates to competitive neutrality principles;
- the adequacy of current compliance and reporting arrangements, and
- complaints and accountability mechanisms operated by the broadcasters, insofar as they relate to competitive neutrality principles.

An Issues Paper has been released to identify matters for consideration and invite input from stakeholders. The Issues Paper raises a number of questions for consideration by participants, including the following which we have been asked to consider in our work:

### **Box: Questions for consideration**

- **Question 7** *Noting that unlike the ABC, the SBS does not have a requirement to take account of the "broadcasting services provided by the commercial broadcasters" and that the SBS has the ability to seek advertising to partially fund its activities, how does the SBS approach the broad issues of competitive neutrality in relation to commercial players?*
- **Question 8:** *Considering the commercial activities of the national broadcasters (e.g. where they are selling or purchasing goods and services), is there evidence that they have taken undue advantage of their government ownership, to the detriment of competitive outcomes?*
- **Question 9:** *What is the differential impact of regulation on commercial and national broadcasters, and is there evidence of consequent adverse impacts on competition and outcomes*
- **Question 13:** *From your perspective do the national broadcasters seek a balance between competing in the market and complementing the market? Is that balance the same for traditional broadcasting and for new digital platforms?*
- **Question 14:** *Do you have comments on [the] guiding principles [that the Panel intends to use to guide its analysis]?*

This report consists of three key chapters. Chapter 2 provides context of the broader market in which SBS operates and the specific and unique role that SBS has in the market.

Chapter 2 focuses on how the issue of competitive neutrality applies to SBS. An analytical framework is used to assess the extent to which the activities of SBS (including SBS VICELAND, Food Network, SBS On Demand, NITV and SBS main channel) are consistent with competitive neutrality. It considers the activities that achieve public interest objectives that should be taken into consideration when examining competitive neutrality issues. Restrictions and obligations imposed on SBS as a result of government ownership are also discussed.

The question of whether any competitive advantages are established upon SBS as a result of its government ownership, is important to establishing the application of competitive neutrality. Chapter 3 therefore provides a summary of the current level of government support and the regulatory advantages and disadvantages that exist for free-to-air (FTA) and subscription television (STV) broadcasters, as well as the regulatory obligations imposed on all broadcasters. This includes the types of regulatory support offered to broadcasters by the Commonwealth Government and analysis of the regulatory advantages and disadvantages provided to commercial free-to-air and subscription broadcasters, SBS and the ABC from the 2013-14 financial year to the 2017-18 financial year. Obligations placed on FTA broadcasters and how the value of assistance provided to each broadcaster has changed over recent years are also considered.

The analysis in this report has been based on a range of data provided by SBS to Deloitte Access Economics. Deloitte Access Economics has relied on this information in undertaking its analysis and forming any conclusions.

# 2 Background to the market

### Key points

- The Australian media market is changing at a breathtaking pace. In recent years there has been a marked shift away from watching live broadcast TV towards consuming content online and on demand – what consumers want, when they want it and on a device of their choice. This shift has been driven by the growth of on demand content delivery platforms such as Netflix, search engine giants like Google and social media platforms such as Facebook, YouTube and Amazon.
  - The shift in viewing behaviours has been most pronounced among younger age groups.
  - Millennials now spent less than 30% of their viewing time watching live programming, which still remains the dominant viewing behaviour for older age groups.
- These rapid changes have created challenges for the business models for television broadcasters globally, including in Australia. The value of traditional TV licences has fallen accordingly, as viewing patterns have shifted.
- Commercial FTA broadcasters, STV and the national broadcasters have sought to provide on demand offerings to continue to remain relevant to younger audiences and to compete with the growth of global platforms.
- Against this broader market context, SBS remains the smallest player in the FTA television market with a current prime time market share of 7.3%. Its market share is higher among older audiences but lower among younger audiences including the 25-54 age group of most interest to advertisers.
- While its market share increased with the introduction of SBS VICELAND (replacing SBS 2) and Food Network, both attract around only 1% of the overall prime time viewing market, while the market share of NITV is around 0.2%.
- While some concerns have been raised about the extent to which SBS is increasingly competing with commercial networks, its market share has remained relatively stable since 2016.
- No SBS programs typically appear in the top 50 programs, reflecting in part a greater focus on factual programs and news and current affairs over sport and reality TV.
- While SBS On Demand is well recognised among on demand users, data on market share for on demand viewing remains incomplete. Existing surveys suggest that SBS On Demand use remains less widespread than AVOD offerings by other commercial FTA broadcasters and major SVOD platforms.
- As a result of current advertising restrictions and differences in audience demographics, SBS currently has the smallest share of the declining FTA television advertising market (approximately 2%) and a much smaller share of the broader FTA television and online advertising market.
- The impact of any competitive behaviour by SBS must be considered in the context of the much larger impacts of this changing media market.

The Inquiry has been asked to consider how the ABC and SBS 'operate within the markets of which they are a part and the basis on which they are competing with the private sector.' This chapter describes the market dynamics, highlights key audience trends and discusses how broadcasters and other stakeholders are responding to those changes in order to meet audience needs and keep pace with changes in technology. It then examines SBS's role in the market in section 2.3.



## 2.1 Market overview

For the purposes of the Inquiry it is not necessary to define the markets in which SBS operates. Nevertheless, SBS competes in three main areas, for:

- **Audiences:** SBS must attract an audience against the entire spectrum of media participants. In principle, its broadcast channels are primarily competing with the ABC and commercial free-to-air (FTA) TV providers. However, it is also broadly competing with subscription television (STV) players, subscription video on demand providers (SVOD) radio, myriad digital platform<sup>3</sup> providers, and news organisations such as Fairfax and News Corporation. Arguably, the global nature of the media market is such that SBS also competes against significant global players in each of these media formats, such as the BBC, Netflix, theguardian.com, NYT.com and others.
- **Advertising spend:** SBS competes against the same organisations for advertising as it does for audiences. It should be noted that advertising spend has shifted significantly to global digital platforms over the past decade. As the Issues Paper notes, online advertising now accounts for more than half of the total Australian advertising market. In addition, outdoor advertising can be seen as an attractive alternative mass media format. SBS also competes against highly trafficked digital sites focused on key advertising verticals such as recruitment, car sales and real estate e.g. Domain.com.au or carsales.com.au for digital advertising dollars.
- **Content:** SBS acquires and commissions content and as such competes against the ABC, all commercial FTA broadcasters, STV providers, SVOD players and all digital platforms for whom video content is increasingly part of the social media customer proposition. In addition, content is being used by organisations such as telecommunications and mobile providers as a means of differentiation, significantly increasing the competitor set for unique and premium content. SBS competes for Australian content, food programming, factual content, sporting content and drama with a broad set of competitors as noted above, but faces less competition for certain genres which are aligned to its specific Charter requirements and differ from content shown on other broadcasters e.g. foreign language programming.

## 2.2 Broader market trends

The nature of competition for audiences, advertising and content has changed significantly over time.

When SBS commenced full-time transmission in 1980 it faced competition from the ABC and a small number of analog commercial FTA providers. TV competed for the eyes and ears of the Australian public against the (Australian) print media and radio networks, but the boundaries of these markets were distinct and geographically defined.

Today these boundaries are much broader, much more opaque and in some instances arguably no longer exist. As the Issues Paper notes:

*This Inquiry is operating in the context of rapidly changing media markets. Boundaries between traditional media markets are dissolving, new platforms exist for distributing news and entertainment, and revenue streams are changing. Consumers are adopting new forms of media rapidly, and the increased competition between producers and distributors is evident from these developments.<sup>4</sup>*

Traditional pay-TV or STV has been available in Australia since 1995 and now is represented in the market by Foxtel (which acquired Austar in 2012 and Optus Vision in 2001) and IP based pay-TV providers such as Fetch TV. However, a recent and significant change in the market for audiences and content has been the emergence of SVOD services such as global behemoth Netflix along with local providers such as Stan and Foxtel Play (currently called Foxtel Now). Most recently, Amazon's globally successful SVOD offering (Amazon Prime) was launched in Australia. These services have seen significant uptake since only launching in the past 4 years. Thirty-two percent of respondents to Deloitte's *Media Consumer Survey 2017* indicated they subscribe to SVOD services, a level which has surpassed traditional pay-TV subscriptions (31%) for the first time. Further, audiences are subscribing to multiple

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<sup>3</sup> For the purposes of this report, and consistent with the current ACCC Inquiry, the term 'digital platforms' encompasses digital search engines, social media platforms and other digital content aggregation platforms. This includes Google, Facebook and YouTube.

<sup>4</sup> Issues Paper, p. 5

# Appendices Appendix 1.1 (cont)

services (32% of SVOD subscribers access multiple services to get the content they want) and in the past year SVOD subscription growth has been the highest in older generations.<sup>5</sup>

Stan and Foxtel Now as local providers, have a focus both in acquiring international productions and in acquiring and commissioning local Australian content. Netflix is the most subscribed to service in Australia and globally. Around 7.5 million Australians subscribe to Netflix, and the service has over 100 million subscribers worldwide.<sup>6</sup> Netflix has also been commissioning content for some time on the global stage. It is reported that Netflix's annual content spend is over US\$7 billion.<sup>7</sup>

In addition to SVOD, there is a long observable trend towards time and place shifting of content consumption. As such, SBS and the ABC, as well as the commercial FTA players have all launched streamed catch-up or on demand services and apps, some of which are funded as advertising video on demand (AVOD). These provide audiences with an 'anytime-anywhere' ability to view and catch up with previously screened and unscreened content as well as archive or back catalogue programming.

Large global platforms such as Google, Facebook, Amazon and Apple are also increasingly competing with SBS for audiences, advertising dollars and content. Amazon in particular has invested significantly in original content and presents a potentially disruptive offer to consumers in bundling SVOD services with Amazon Prime delivery and e-commerce membership (as it does in the UK and other markets). Apple meanwhile has focused, like many telecommunications providers on 'owning the living room' through set top boxes (Apple TV) and integrating the viewing experience with device ownership and bundled services. News Corp Australia has a large influence across media platforms, owning a stake in Foxtel, along with its newspapers and digital news sources. Google and Facebook offer a range of services (including search engines, social media services, messaging, live content, short form video, mapping and content aggregation) with programmatic advertising selling and audience data services being provided to advertisers.

## 2.2.1 Trends in viewing

Despite, or even because of the factors highlighted above, watching 'TV-type' content remains as popular as ever. The amount of time the average Australian spends each week watching movies or TV shows on any device increased from 17.2 hours in 2015 to 17.5 hours in 2017<sup>8</sup>. However, the way in which this content is watched is changing.

The average number of hours spent watching traditional broadcast TV on in-home TV sets has fallen from 3 hours and 10 minutes per day in the fourth quarter of 2010 to 2 hours and 27 minutes per day in the fourth quarter of 2017.<sup>9</sup> At the same time, other TV screen use (which excludes broadcast and playback, but includes online catch-up services, streaming, internet browsing and the use of SVOD services) has risen from 53 minutes per day in 2014 to 67 minutes per day in 2017.

Screen Australia recently conducted a survey of Australian viewers of professionally developed online screen content.<sup>10</sup> The analysis suggests that while broadcast TV viewing has declined, it remains the most common platform for video on demand (VOD) users. While broadcast catch-up viewing time has doubled since 2014, VOD audiences spend more time consuming SVOD, TVOD and other AVOD services, highlighting the extent to which changes in the market are being driven by global platforms such as Netflix to a greater degree than by local catch-up TV services.

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<sup>5</sup> Deloitte Media Consumer Survey 2017

<sup>6</sup> Roy Morgan (2018) *Netflix hits new high in Australia – 7.6 million*. <http://www.roymorgan.com/findings/7343-netflix-subscriptions-june-2017-201709270713>; Joan E. Solsman (2018) *Netflix hits 125 million subscribers worldwide*. <https://www.cnet.com/news/netflix-hits-125-million-subscribers-worldwide/>

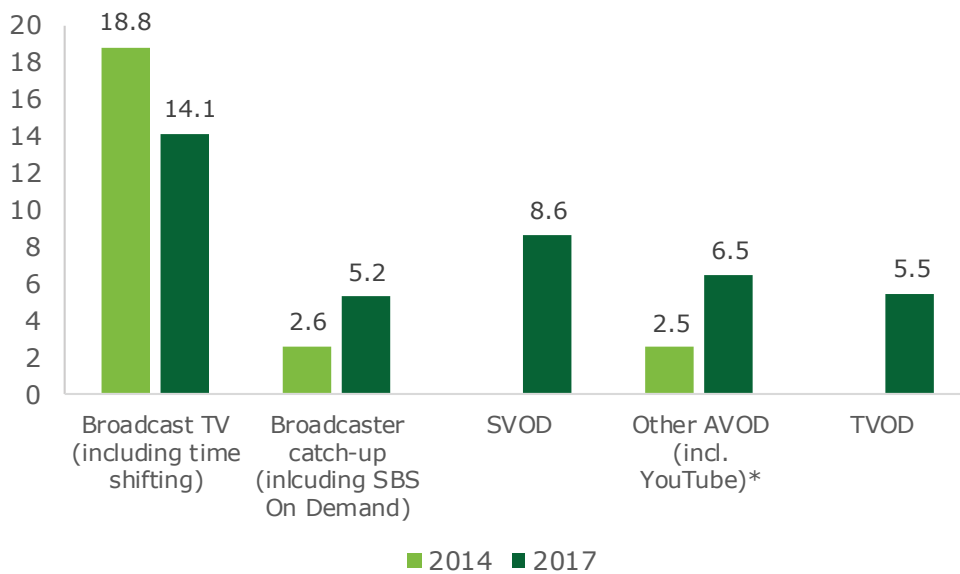
<sup>7</sup> New York Times (2017), 'Netflix Says It Will Spend Up to \$8 Billion on Content Next Year', <https://www.nytimes.com/2017/10/16/business/media/netflix-earnings.html>.

<sup>8</sup> Media Consumer Survey 2017, p. 9

<sup>9</sup> Nielsen, Australian Video Viewing Report Quarter 4, 2017.

<sup>10</sup> It should be noted that only 61% of Australians indicated they watched professionally produced screen content online so this is not a representative sample of the Australian population and the results should be interpreted accordingly.

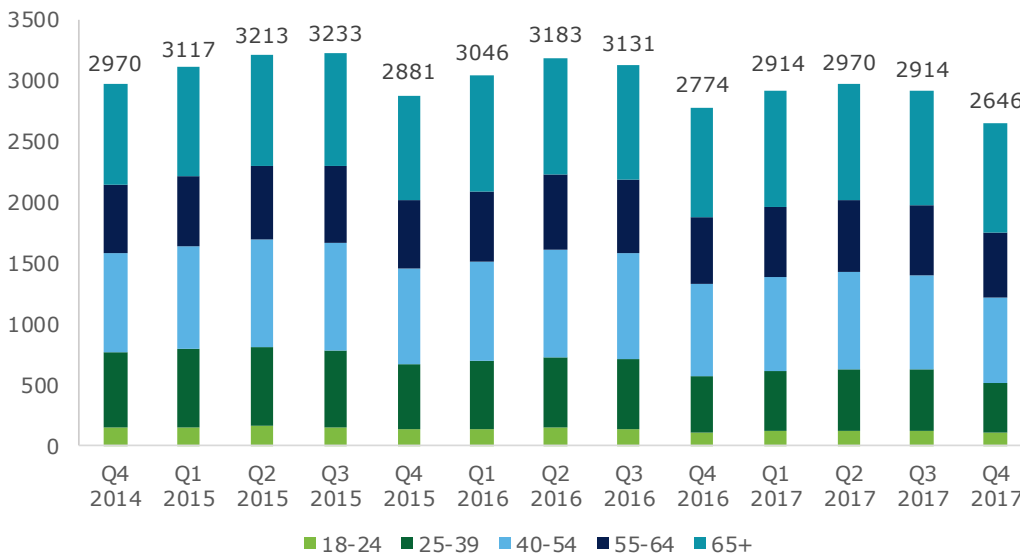
Chart 2.1: Average hours per week for video on demand users



Source: Screen Australia (2018) Online & On Demand 2017: Trends in Australian online viewing habits. Note: TVOD represents Transaction Video On Demand. \*In 2014, audiences were only asked about YouTube viewing so this may underrepresent Other AVOD average hours.

There has also been a decline in total prime time average audiences as shown below (Chart 2.2) from a peak of 3.2 million in the third quarter of 2015 to 2.6 million for the last quarter of 2017. This decline has been observed across all ages groups, but is most pronounced among younger audiences.

Chart 2.2: Changes in prime time television audiences over time by age group.



Source: OzTAM 5 City Metro average audiences, 1800-2400, FTA TV (incl. spill) 2014-2017.

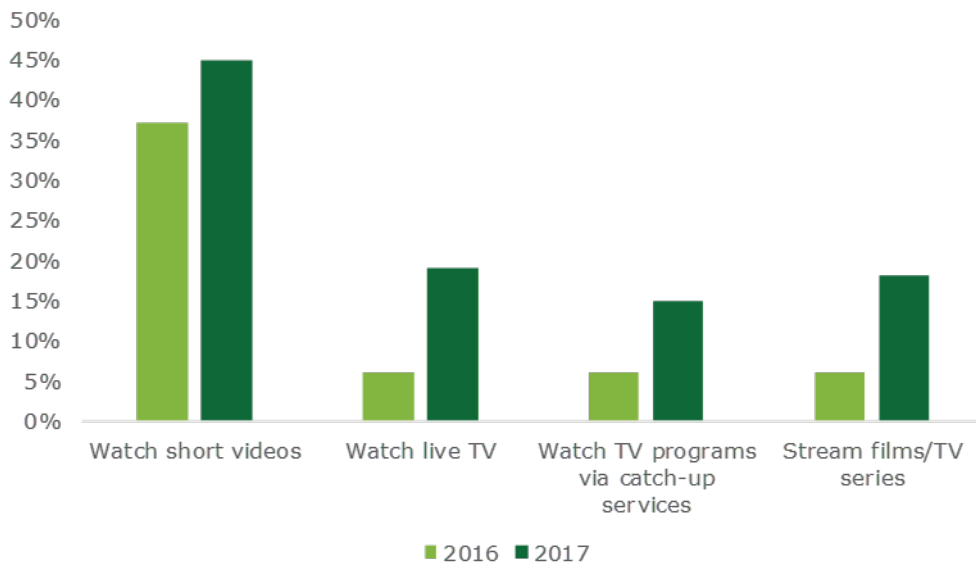
Audiences’ desire to consume content on a ‘what I want, when I want, where I want and on the device of my choice’ basis <sup>11</sup> is reflected in the use of mobile devices for watching videos and live TV. Smartphone penetration in Australia is nearly ubiquitous at 88% and growth in watching live TV and catch-up services on mobiles is rapid, tripling in 2017, compared to 2016.<sup>12</sup> Approximately 70% of 18-34 year olds watch videos on their smartphone each week, with growth particularly observed in the 25-34 age group.

<sup>11</sup> Issues Paper p6

<sup>12</sup> Deloitte, *Smart everything, everywhere: Mobile Consumer Survey 2017*.

# Appendices Appedix 1.1 (cont)

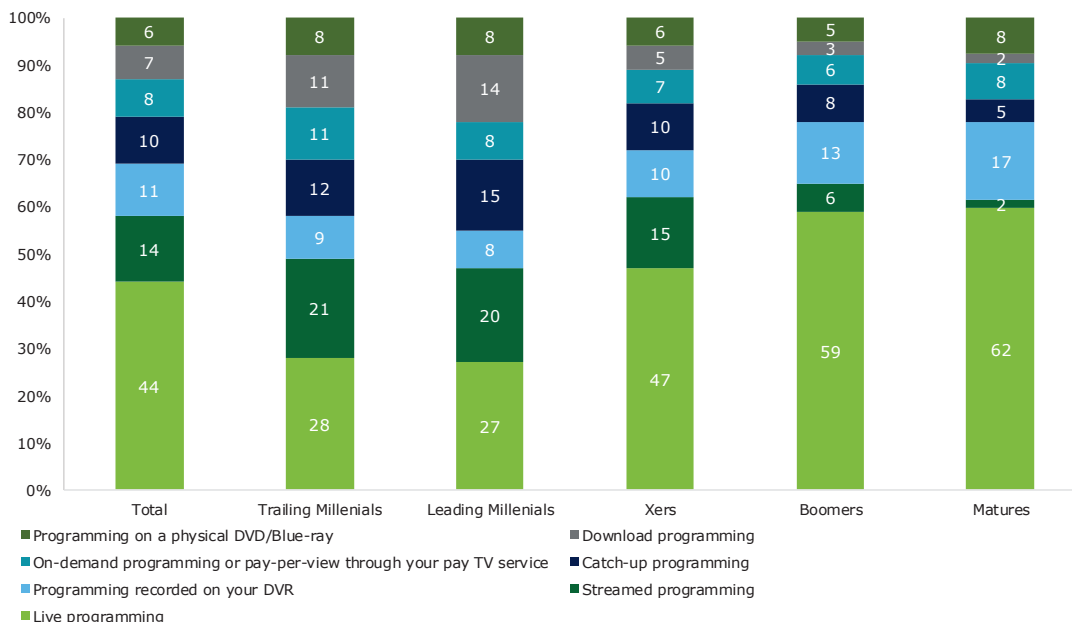
Chart 2.3: Weekly phone activities- video views- all age groups



Source: Deloitte Mobile Consumer Survey 2017.

Much of the shift away from broadcast TV is being driven by younger audiences, including the shift to mobile devices on which to watch TV-type content as outlined above. In order to capture and retain younger audiences, who potentially have many years of viewing in front of them, broadcasters continue to innovate in their content, programming and platform offerings.

Chart 2.4: Viewing patterns by age demographic



Source: Deloitte Media Consumer Survey 2017.

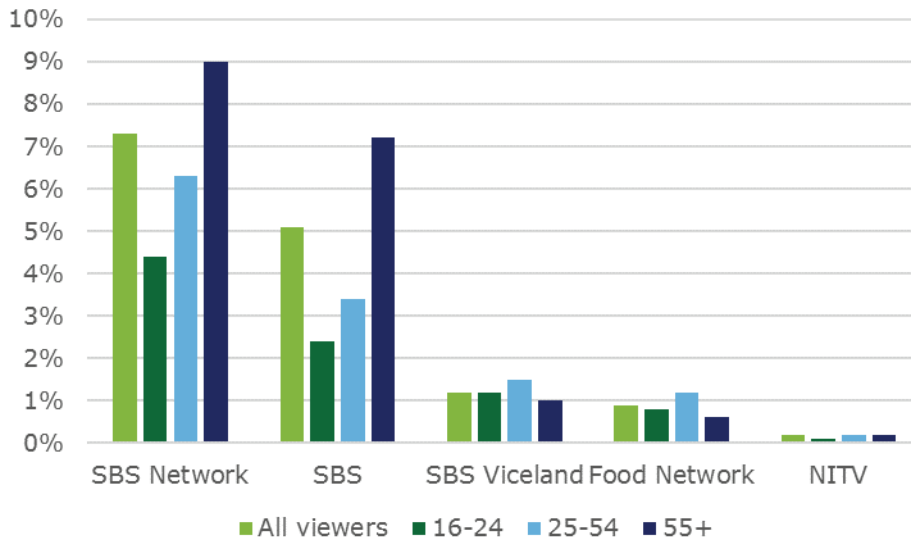
Note: Trailing Millennials are those aged 14-27, Leading Millennials are those aged 28-33, Xers are those aged 34-50, Boomers are those aged 51-69 and Matures are those aged 70+.

### 2.3 SBS's role in the contemporary media market

In the context of these broader trends, it is useful to consider SBS's role in the media market – noting that the broadcasting market as a whole is facing challenges from a converging media space.

SBS is the smallest network in Australia. The prime time market share of the SBS network, its main channel (SBS), SBS VICELAND, Food Network and NITV is outlined in Chart 2.5 below.

Chart 2.5: SBS audience share of prime time (6pm-12pm) metropolitan television audiences 2018



Source: OzTAM data provided by SBS for 2018 calendar year to date.

The total market share across the SBS Network of prime time metropolitan audiences 7.3% over the 2018 calendar year to date. SBS's audience is strongly skewed towards older viewers, with a 9% market share of those aged over 55, but only a 6.3% market share of the 25-54 year old demographic, which is typically most attractive to advertisers. While these figures relate to prime time viewing, SBS's overall share of total audiences is smaller at 6.2%.

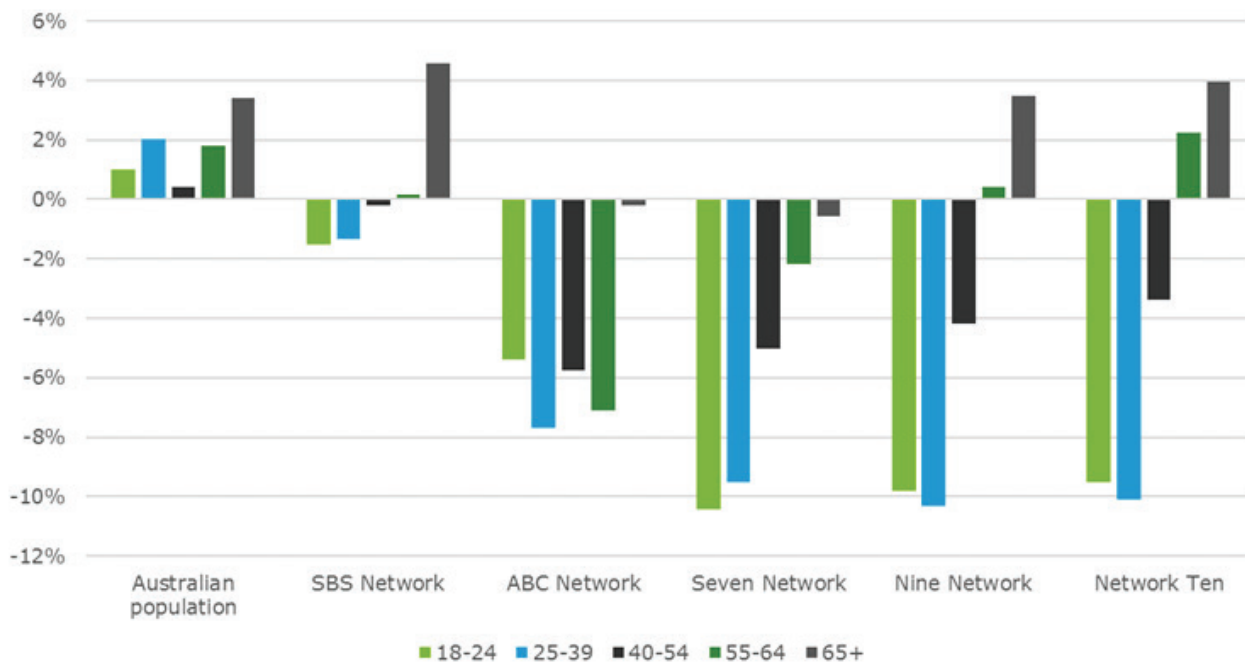
SBS VICELAND and Food Network had a market share of 1.2% and 0.9% respectively in 2018 year to date, with both having slightly higher relative shares among those aged 25-54. The market share of NITV did not exceed 0.2% in any age group.

Over time, the total prime time market share of the SBS Network has risen from 5.6% in 2013, to 7% in 2016 partly as a result of introduction of the Food Network, but has since stabilised with a prime time market share of 7.4% in 2017 and 7.3% in 2018 (calendar year to date).

Chart 2.6 below shows how FTA audience numbers have generally fallen since 2012, with the only (small) gains being posted in older age groups for SBS, Nine Network and Network Ten. The audience decline in the 18-54 age group for other broadcasters are experienced by all broadcasters and is consistent with increased competition from new and emerging media platforms and technologies across the sector rather than a substantial redirection of viewers from the commercial FTA broadcasters to the public broadcasters.

# Appendices Appedix 1.1 (cont)

Chart 2.6: Changes in Australian population and audience 18:00-24:00 from 2012 to 2017

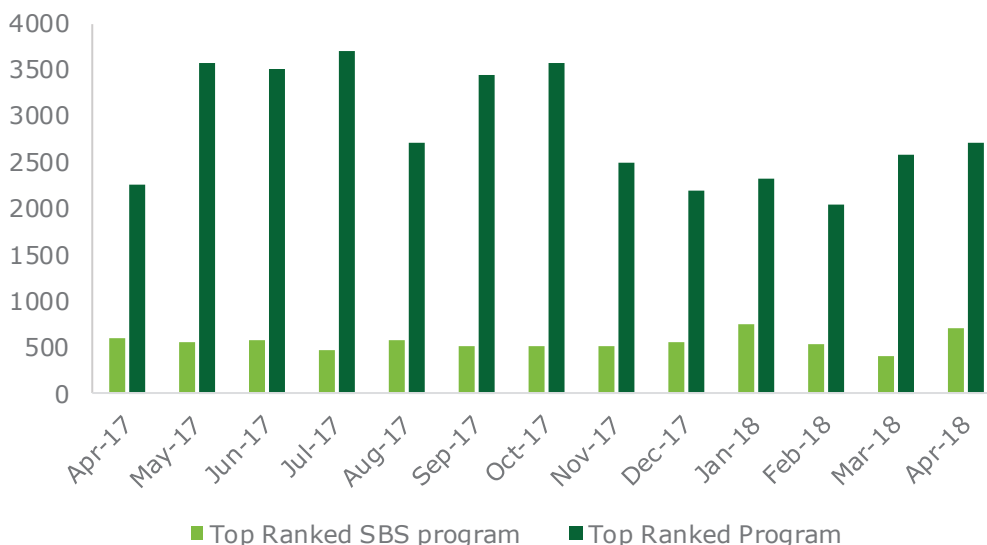


Source: Australian Bureau of Statistics; OzTAM 5 city metro average audiences, 5-year compound annual growth rate, 2012-2017.

The Issues Paper notes concerns raised in the Free TV submission to the House of Representatives Standing committee on Communication and the Arts Inquiry about the extent to which SBS is competing with commercial FTA players to provide content of commercial appeal.

While some SBS prime time shows do draw large audiences they typically receive a relatively small share of the audiences relative to the prime time programs shown by commercial FTA broadcasters. Chart 2.7 shows the audiences for the most popular SBS programs for each month from April 2017 to April 2018. Over the last 12 months only 2 SBS programs ranked in the top 100 (based on total audience) in any given month and average audiences ranged from 13% to 32% of those achieved by the most popular show in that month.

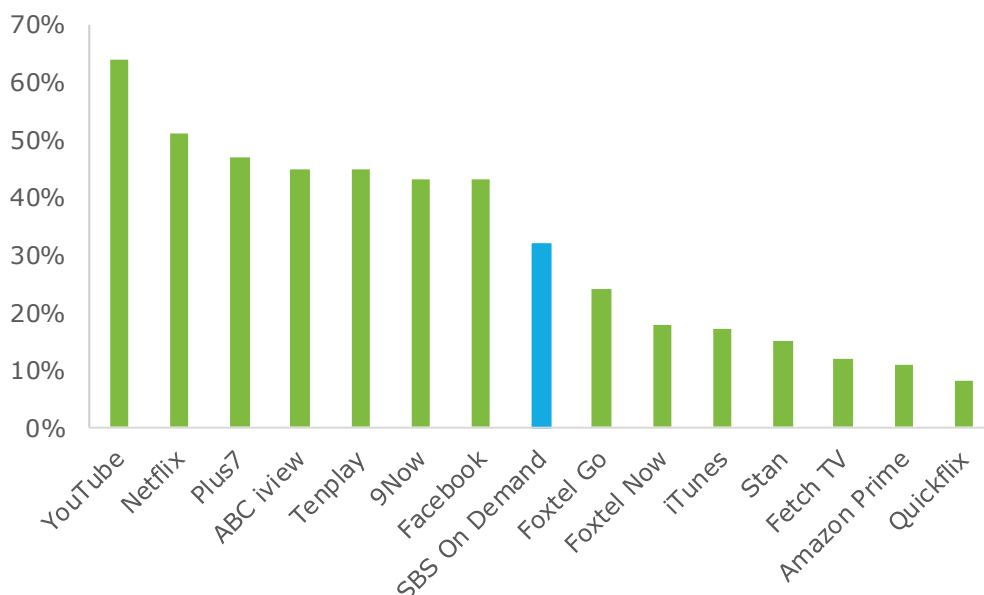
Chart 2.7: Top ranked SBS programs and top ranked program (thousands)



Source: Deloitte Access Economics analysis of OZTAM data.

Determining the market share of SBS in the VOD market is a complicated exercise as there is limited robust data on usage and a similar challenge exists for radio. However, data from Screen Australia's Online and On Demand 2017 study indicates that based on a sample of video on demand users, 32% had used SBS On Demand in the last month. This reveals that use of SBS On Demand lags that of YouTube, Netflix, Facebook and the catch-up services offered by the ABC and commercial FTA broadcasters.

Chart 2.8: Proportion of VOD users using VOD services at least monthly



Source: Screen Australia (2018) Online & On Demand 2017: Trends in Australian online viewing habits.

Note: Survey was of video on demand users so does not represent a representative sample of the Australian population

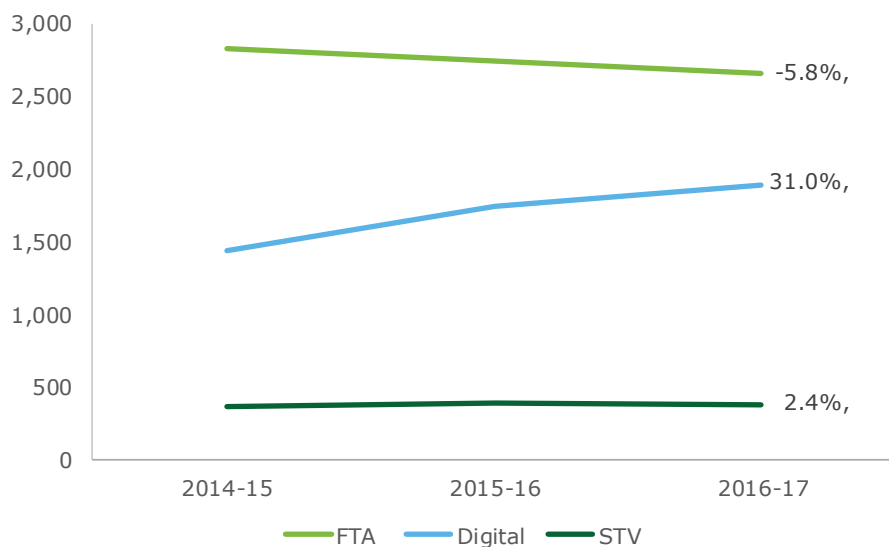
## 2.4 Advertising revenue

The advertising market is increasingly moving online. Data published by the Commercial Economic Advisory Services of Australia shows a longer-term trend of the online share of the total advertising market rising from 6.1% in 2005 to 50.7% in 2017. By comparison, the share of television advertising has fallen from 37.5% to 23.8% of the total advertising market.

In recent years this trend has largely been manifest through flat advertising revenue for commercial FTA players and STV, while growth in digital advertising continues at pace, largely as a result of a shift of advertising to social sites and search engines. Chart 2.9 draws on data from SMI, which contains bookings for a range of media agencies. The chart shows that advertising revenue in the FTA sector has fallen 5.8% since 2014-15 and digital revenue has increased 31%, while STV advertising revenues have remained relatively stable, up by just over 2%.

# Appendices Appedix 1.1 (cont)

Chart 2.9: Advertising revenue by sector (\$ million) and change since 2014-15

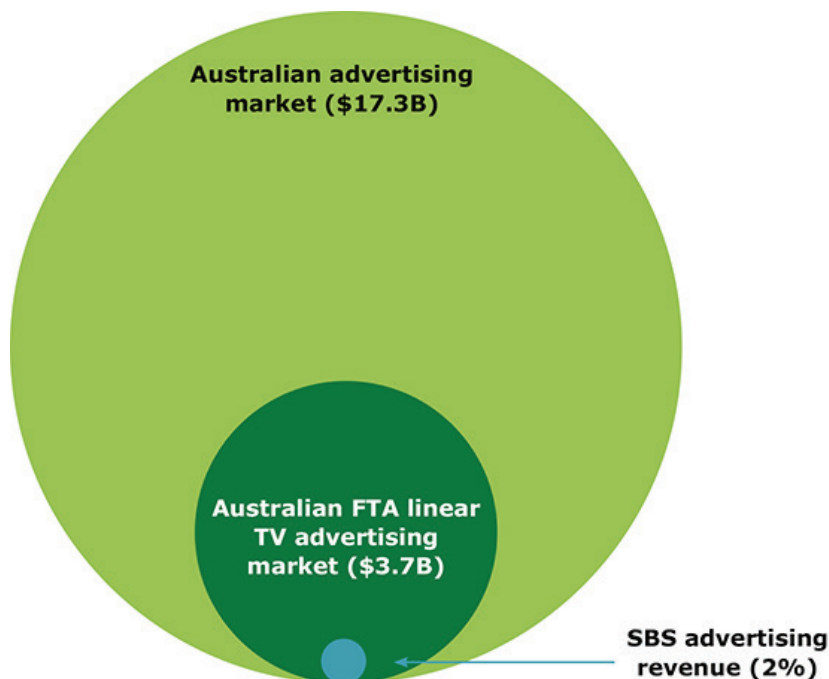


Source: SMI Media Trends Report June 2017.  
 Note: Data labels indicate growth from 2014-15 to 2016-17.

## 2.4.2 SBS’s share of the advertising market

In 2016-17, total SBS television advertising revenue represented approximately 2% of the \$3.7 billion FTA linear TV advertising market and as such positions SBS as having the smallest relative to the commercial broadcasters (Figure 2.1). Total advertising revenue for SBS was \$93 million in 2016-17, which equated to 0.5% of the total Australian advertising market based on industry revenue figures.

Figure 2.1: SBS and the Australian advertising market 2017/18



Source: PWC Media Outlook; SBS internal data. Note: PwC forecasts for advertising market revenue have been taken from CY17. SBS shows financial year 2016-17. These figures for the total advertising market are higher than those contained in the SMI Media Trends report as this does not capture all advertising revenue.



# 3 Application of competitive neutrality to SBS

## Key points

- In order to demonstrate that competitive neutrality principles have been breached, it would be necessary to show that:
  - SBS faces competition in an activity
  - SBS has a net advantage in providing a service as a result of its government ownership
  - Public interest considerations do not outweigh any detriment to competitive neutrality
- It is important that competitive neutrality be considered in the context of how SBS achieves its objectives through a suite of content and platforms. The approach should recognise the interdependencies between content and platforms and audience pathways, rather than focusing on a narrow assessment of individual programs on single platforms.
- On the one hand, SBS has an advantage as a result of its government funding, but other factors (including its requirement to comply with its Act, Charter and the limitations on its advertising) restrict its ability to fully compete in the market.
- Some channels and platforms SBS offers such as Food Network, SBS VICELAND and SBS On Demand are now operating on a commercial basis and covering their avoidable costs without relying on government funding, while others which focus more heavily on CALD and LOTE programming are more reliant on government funding to support their activities.
- In terms of the extent to which SBS serves the public interest, a large proportion of SBS content, such as that provided in LOTE and CALD material, is widely considered to be in the public interest, although it is important that the Inquiry clearly define this term.
- Broader appeal content can directly support the public interest by increasing consumer choice. It can also indirectly support the public interest through providing funding for programs which have less broad appeal, by ensuring cost-efficient delivery of content and allowing cross-promotion of other material (e.g. CALD and LOTE programming) to attract a wider audience and help achieve the objectives of the SBS Charter.
- While SBS's Charter requires it to contribute to the diversity of Australian television services, there are no competitive neutrality requirements for SBS to balance 'competing' in the market and 'complementing' the market.
- Any examination of competitive neutrality should also consider whether there has been a material detriment to competitive outcomes. SBS has a very small share of viewership and advertising revenue, and its ability to influence competitive outcomes is commensurately small given its size.
- Competitive neutrality claims that have been raised about some SBS channels and platforms should be considered in the context of the issues raised above.

# Appendices Appendix 1.1 (cont)

## 3.1 Introduction

The focus of the analysis in this Chapter is on:

- the application of competitive neutrality principles to the business activities of SBS (and the appropriate framework to use in making this assessment)
- the cost structures of SBS business activities insofar as they relate to competitive neutrality principles
- the regulatory obligations for SBS insofar as they relate to competitive neutrality principles.

Specifically, this Chapter considers questions 8, 13 and 14 of the Issues Paper, although the broader framework and discussion are also relevant other questions outlined in the Issues Paper.

## 3.2 Background to competitive neutrality in Australia

### 3.2.1 Principles of competitive neutrality

The notion of competitive neutrality is underpinned by the assumption that, in the absence of market failure, markets operate most efficiently without government intervention. Accordingly, if governments choose to participate in competitive markets, this should be on the same terms as private businesses. If the government is actively intervening in a market to achieve a desired outcome (which the market would not otherwise achieve), this outcome should be in the public interest.

Competitive neutrality policy, therefore, seeks to ensure that government businesses do not enjoy any net competitive advantage as a result of their public sector ownership without a public interest justification.

### 3.2.2 Competitive neutrality in Australia

Competitive neutrality is not legislated, but the government's approach is a matter of microeconomic reform policy, originally set out in 1995 under the *Competition Principles Agreement* (CPA). The CPA sets out the objective of competitive neutrality policy as "*the elimination of resource allocation distortions arising out of public ownership of entities engaged in significant business activities.*"

Competitive neutrality formed part of the broader push for microeconomic reform in the late 1980s and early 1990s. It first became part of the Australian approach to governance of government entities in 1995, when the Commonwealth, state and territory governments agreed to implement competitive neutrality in the 1995 *Competition Principles Agreement* (CPA). At the Commonwealth level, this was manifested as the 1996 *Competitive Neutrality Policy Statement*.

In 2004, the Australian Treasury published the *Australian Government Competitive Neutrality Guidelines for Managers*. This aims to provide practical guidance to Commonwealth entities about whether competitive neutrality applies to their activity and the adjustments necessary to comply with the principle.

In an effort to continue the process of microeconomic reform, the Commonwealth Government commissioned an independent *Competition Policy Review* led by Professor Ian Harper in 2015. This review considered competition policy in a number of contexts, making suggestions for change across the way governments regulate competition by private and public organisations. The Harper Review recommended that Australian governments should review their competitive neutrality policies and increase the transparency and effectiveness of their relevant processes.

In response to this, the Australian Treasury commenced a review of Competitive Neutrality Policy,<sup>13</sup> reporting on whether the underlying aims of competitive neutrality policy are still being achieved by current policy. Consultation closed in April 2017 however to date no draft or final report had been issued.

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<sup>13</sup> Australian Treasury (2017) *Review of the Commonwealth Government's Competitive Neutrality Policy: Consultation Paper*. Online: [https://consult.treasury.gov.au/market-and-competition-policy-division/competitive-neutrality-review/supporting\\_documents/CN%20Review%20Consultation%20Paper.pdf](https://consult.treasury.gov.au/market-and-competition-policy-division/competitive-neutrality-review/supporting_documents/CN%20Review%20Consultation%20Paper.pdf)

### 3.2.3 Definition and interpretations of competitive neutrality

The CPA defined competitive neutrality in the following terms:

*The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.*<sup>14</sup>

The application of competitive neutrality under this definition is comprised of a number of separate elements:<sup>15</sup>

- The government entity must be engaging in a **business activity**.
  - This requires that there be user-charging for goods or services;
  - There must be an actual or potential competitor; and
  - Managers of the activity must have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.
- The business activity must be **significant**.
  - All Government Business Enterprises, Commonwealth Companies and Business Units are deemed significant for these purposes.

Governments are only required to implement the principles of competitive neutrality to the extent that the **benefits from implementation outweigh the costs**.

Several bodies apply a broad public interest test, considering the public policy objectives of government in balancing whether competitive neutrality applies to an organisation's business activity. For instance, the AGCNCO is required to consider broader 'public interest' issues in evaluating complaints.<sup>16</sup> The same principle is applied by the Victorian Government.<sup>17</sup> This is consistent with the guiding principles outlined in the Issues Paper.

Importantly, the Commonwealth guidance on the subject of competitive neutrality notes that:

*Competitive neutrality does not require governments to restructure the delivery of social programs into competitive market based mechanisms ...*

and, most importantly:

*Competitive neutrality does not imply that government businesses cannot be successful in competition with private businesses. Government businesses can achieve success as a result of their own merits and intrinsic strengths, but not as a consequence of unfair advantages flowing from government ownership.*<sup>18</sup>

This point is similarly made in the excerpt from the Harper Review provided in the Issues paper:

*The principle of competitive neutrality does not extend to competitive advantages arising from factors such as business size, skills, location or customer loyalty... Differences in workforce skills, equipment and managerial competence, which contribute to differing efficiency across organisations, are not the concern of competitive neutrality policy.*<sup>19</sup>

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<sup>14</sup> Competition Principles Agreement 1995 cl 3(1).

<sup>15</sup> Australian Treasury (2017) *Review of the Commonwealth Government's Competitive Neutrality Policy: Consultation Paper*. Online: [https://consult.treasury.gov.au/market-and-competition-policy-division/competitive-neutrality-review/supporting\\_documents/CN%20Review%20Consultation%20Paper.pdf](https://consult.treasury.gov.au/market-and-competition-policy-division/competitive-neutrality-review/supporting_documents/CN%20Review%20Consultation%20Paper.pdf)

<sup>16</sup> *Productivity Commission Act 1998* (Cth) s 21(4) requires the Commission to give particular consideration to the public interest requirements in clause 1 of the CPA.

<sup>17</sup> Victorian Department of Treasury and Finance (2012) *Competitive neutrality policy*. Online: <http://www.dtf.vic.gov.au/files/1bf2df12-3245-4583-af48-a1cd00adff92/CompetitiveNeutralityPolicy-Sep2012.pdf>

<sup>18</sup> *Commonwealth Competitive Neutrality Policy Statement*, June 1996, p. 5.

<sup>19</sup> Issues paper, p. 10.

## Appendices Appedix 1.1 (cont)

The only competitive neutrality complaint dealt with to date by the Productivity Commission relating to the public broadcasters was an investigation into the ABC's production facilities.<sup>20</sup> A private television production company made a complaint that because the production facilities were jointly used by government and private clients, they were priced so low that private competitors could not compete. The Productivity Commission concluded that government businesses will be compliant with competitive neutrality principles "if its prices for commercial output exceed the avoidable cost of supplying the service", noting that "the avoidable cost comprises all the costs which the agency would avoid if the service was not provided." We have had regard to this finding in our analysis.<sup>21</sup>

In the UK the Charter Review considered a range of similar issues in relation to the BBC. There are, however, important differences to note between the BBC and SBS's commercial operations.

- Unlike SBS, the BBC cannot engage in commercial activity directly but only through subsidiary companies, and not using government revenue.
- The funding model under which the BBC operates is different to that of SBS. Rather than being funded through general government revenue or commercial advertising, television owners in the United Kingdom pay a "TV licence" fee which funds the BBC.
- The BBC is the largest and most influential player in the UK media market, with 33 per cent of the television audience and 53 per cent of the radio audience. By comparison, SBS has a much less significant role in Australia's media sector.

### 3.2.4 Questions for this review

The focus of the analysis in this chapter is to comment on respond to the following questions on competitive neutrality set out in the Issues paper:

- **Question 7** *Noting that unlike the ABC, the SBS does not have a requirement to take account of the "broadcasting services provided by the commercial broadcasters" and that the SBS has the ability to seek advertising to partially fund its activities, how does the SBS approach the broad issues of competitive neutrality in relation to commercial players?*
- **Question 8:** *Considering the commercial activities of the national broadcasters (e.g. where they are selling or purchasing goods and services), is there evidence that they have taken undue advantage of their government ownership, to the detriment of competitive outcomes?*
- **Question 13:** *From your perspective do the national broadcasters seek a balance between competing in the market and complementing the market? Is that balance the same for traditional broadcasting and for new digital platforms?*
- **Question 14:** *Do you have comments on [the] guiding principles [that the Panel intends to use to guide its analysis]?*

Questions 7 and 8 requires a proper application of competitive neutrality principles to the activities of SBS; this is done in sections 3.4 and 3.5 below.

This section first considers question 14, than addresses Questions 7 and 8 which goes to the heart of the application of competitive neutrality to SBS. It then considers Question 13.

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<sup>20</sup> Commonwealth Competitive Neutrality Complaints Office (2000). *Investigation No. 4: ABC Production Facilities*. Online: <http://www.pc.gov.au/inquiries/completed/abc-production/report4.pdf>

<sup>21</sup> *Ibid.*, p. 4

### 3.3 Addressing question 14 in the issues paper: guiding principles

#### Question 14: Do you have comments on [the] guiding principles [that the Panel intends to use to guide its analysis]?

The Issues Paper proposes the following guiding principles for the Inquiry panel to consider in analysing competitive neutrality issues:

- *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.*

These guiding principles broadly help to provide appropriate context on the Australian media environment: namely, that the national broadcasters (including SBS) are funded for public interest purposes, and public interest should consequently be the central focus of any competitive neutrality inquiry.

These principles appear reasonable and provide an appropriate basis for guiding the review.

However it is important to consider in what is meant by the “public interest” in the context of SBS’s services. A starting point is the SBS Charter, which is set out as an expression of Parliamentary intent about the function and purposes of SBS. Furthermore, the Competition Principles Agreement in 1995 envisaged an assessment of a number of public interest factors as follows:<sup>22</sup>

1. *government legislation and policies relating to ecologically sustainable development;*
2. *social welfare and equity considerations, including community service obligations;*
3. *government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;*
4. *economic and regional development, including employment and investment growth;*
5. *the interests of consumers generally or of a class of consumers;*
6. *the competitiveness of Australian businesses; and*
7. *the efficient allocation of resources.*

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<sup>22</sup> Competition Principles Agreement 1995 cl 3(6) cited in Australian Government (2017) *Review of the Commonwealth Government’s Competitive Neutrality Policy Consultation Paper*.

# Appendices Appendix 1.1 (cont)

These factors need not be seen as an exhaustive list although many of them can be interpreted relatively broadly. SBS's activities are likely to be relevant to factors 2, 3, 4 and 5.

Public interest element	Application to SBS
<p>2. Social welfare and equity considerations, including community service obligations</p>	<p>The SBS Charter places an obligation on SBS by prescribing the types of content it must show and the types of audience it should seek to serve which is based on increasing the diversity of content and reflecting Australia's multicultural population.</p> <p>There is considerable evidence of the impact SBS has on social welfare and equity considerations, particularly by promoting cultural diversity and multiculturalism. Around 1.5 million in-language radio episodes are downloaded each month; the Federation of Ethnic Communities' Councils of Australia (FECCA) has described the SBS as "critical for social inclusion purposes for Australian CALD communities." SBS is clearly viewed this way in the broader community. In a recent survey by Pollinate on attitudes towards television broadcasters</p> <ul style="list-style-type: none"> <li>• 54% of respondents agreed that SBS helps Australia to be a more inclusive nation;</li> <li>• 63% agreed that SBS represents the cultural diversity of Australia on-screen; and</li> <li>• 65% agreed that SBS helps them understand and appreciate different cultures.</li> </ul>
<p>3. Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity</p>	<p>By producing content for diverse audiences, SBS promotes access and equity, allowing individuals from multilingual or multicultural backgrounds to participate in Australian society. Showing content of wide appeal, even if not directly related to serving multilingual or multicultural audiences, gives SBS an opportunity to promote its other activities and engage the broader population on relevant issues.</p>
<p>4. Economic and regional development, including employment and investment growth</p>	<p>SBS employs 1466 staff, and also supports the employment of producers of its commissioned content: over 200 hours of commissioned content aired on SBS and SBS VICELAND in 2016-17, with a further 120 hours of non-sport commissioned content on NITV.<sup>23</sup> This expenditure supports the employment of a number of additional jobs in the production sector and thus supports the broader media ecosystem. Improving participation in Australian society by multicultural and multilingual groups may also contribute to Australia's overall economic development.</p>
<p>5. The interests of consumers generally or of a class of consumers</p>	<p>By providing distinctive content, SBS is able to offer greater choice to consumers. Providing additional choice is broadly in the interests of consumers. As noted above, SBS is uniquely positioned among broadcasters in providing a significant proportion of CALD content. SBS also provides a large share of factual content and news and current affairs content.</p>

Beyond more clearly defining the public interest, we also suggest the guiding principles should recognise that competitive neutrality needs be considered in the context of how SBS achieve its objectives through a suite of content and platforms, recognising the interdependencies between content and platforms and audience pathways, rather than a narrow assessment of individual programs on single platforms. Ultimately, SBS need to provide a comprehensive schedule of programs that work together to best achieve its Charter obligations and public interest objectives. For example, some broader appeal programs may be used to draw in viewers and promote other programs in order to achieve the broader public interest objectives in the SBS Charter.

<sup>23</sup> SBS Annual Report 2016-17.

### 3.4 Addressing question 7 and 8 in the issues paper: evidence on competitive neutrality

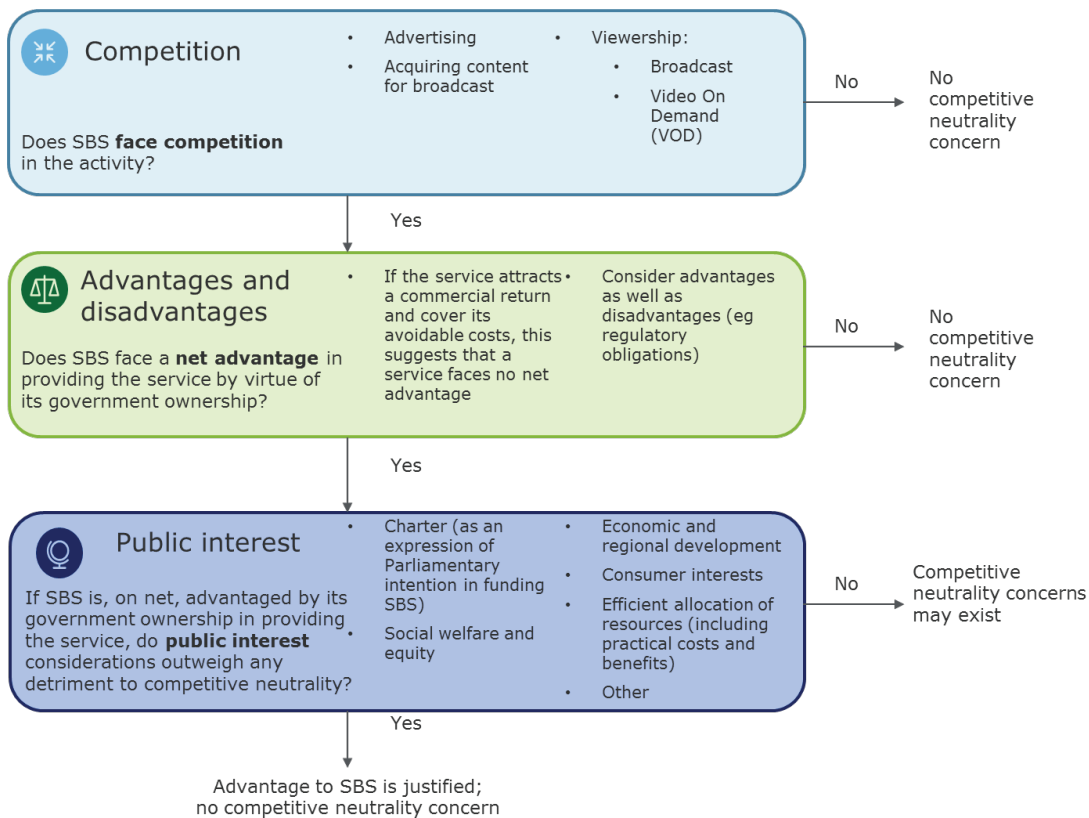
**Question 7:** Noting that unlike the ABC, the SBS does not have a requirement to take account of the “broadcasting services provided by the commercial broadcasters” and that the SBS has the ability to seek advertising to partially fund its activities, how does the SBS approach the broad issues of competitive neutrality in relation to commercial players?

**Question 8:** Considering the commercial activities of the national broadcasters (e.g. where they are selling or purchasing goods and services), is there evidence that they have taken undue advantage of their government ownership, to the detriment of competitive outcomes?

#### Approach to assessing competitive neutrality

The key question for the Inquiry is whether SBS is compliant with the principles of competitive neutrality. Figure 3.1 sets out what Deloitte Access Economics believes is the appropriate economic framework to determine whether competitive neutrality applies to an activity of SBS, and whether SBS is compliant with the principles of competitive neutrality in respect of that operation.

Figure 3.1: Framework for assessing whether SBS activities raise competitive neutrality concerns



Adapted from Australian Government 2004 Competitive Neutrality Guidelines for Managers.



# Appendices Appendix 1.1 (cont)

The requirements of each of the three main elements of this framework are set out below.

## Competition

As noted in Chapter 2, SBS potentially competes with other market participants in:

- Attracting **audiences** on both broadcast television and video on demand (VOD) services<sup>24</sup>
- Attracting **advertising**<sup>25</sup>
- Acquiring **content** for broadcast<sup>26</sup>

A number of SBS's activities are not subject to significant market competition. For instance, there is very little Australian competition for the acquisition of content in languages other than English. By definition, competitive neutrality requires SBS to be engaging in competitive behaviour against other market players. As a result, the acquisition of this content is unlikely to engage competitive neutrality concerns.

Importantly, competitive neutrality principles do not prohibit SBS from competing with other market players, they do not confine SBS to a 'market failure' role, and they do not prevent SBS from being successful in this competition. As described in the Harper Review:

*The principle of competitive neutrality does not extend to competitive advantages arising from factors such as business size, skills, location or customer loyalty.*

SBS is explicitly permitted to engage in commercial activity, namely, to show advertising and seek sponsorship under sections 45 and 45A of the *SBS Act 1991* (Cth).

It is only if SBS's success in a market is *a result of its government ownership* that competitive neutrality concerns may be enlivened.

## Advantages and disadvantages for SBS relative to other market players

A government entity will only engage competitive neutrality issues if it has a net advantage as a result of government ownership. As a result, both the advantages and disadvantages associated with SBS's government ownership need to be considered, not just the advantages.

The full range of advantages and disadvantages that SBS has relative to other market participants are discussed in Chapter 4. To summarise for the purpose of this chapter, there are a number of ways that SBS is advantaged or disadvantaged as a result of its position as a public broadcaster. These include:

- SBS receives government funding which means that unlike commercial FTA broadcasters it does not have to generate a commercial rate of return across all of its services, although SBS does generate commercial revenue as its operating model permits it to generate some advertising revenue. It also has an advantage in respect of the spectrum it receives as it does not pay annual spectrum charges unlike the commercial broadcasters.
- A key disadvantage is that SBS can only show 5 minutes of advertising per hour of programming under ordinary circumstances. As discussed in Chapter 4, this limits its ability to effectively compete for advertising dollars.
- SBS is also required to provide content in accordance with the objectives of its Charter whereas commercial broadcasters (and any other SVOD or subscription providers who also provide content) do not have an overarching Charter and thus are free to focus on any material that can attract broad audiences.

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<sup>24</sup> As described in the Issues Paper, p 7: "With a substantial back catalogue of popular and niche entertainment and informative content, SBS On Demand competes directly with subscription on demand services such as Stan, Foxtel and Netflix for content and audiences."

<sup>25</sup> <https://tvtonight.com.au/2015/03/free-tv-whinging-over-sbs-ads-again.html>

<sup>26</sup> Darren Davidson, *Calls to rein in ABC and SBS*, The Australian, July 31 2017.



- SBS is also subject to a number of unique regulatory obligations which commercial broadcasters are not subject to:
  - Remuneration of SBS’s Board of Directors and Managing Director is set by the Commonwealth Remuneration Tribunal;
  - SBS cannot take on private debt without the permission of the Finance Minister;
  - SBS’s management is accountable to the SBS Board appointed by the Commonwealth Government, and ultimately to Parliament. Management must appear at parliamentary hearings and SBS is subject to Freedom of Information (FOI) requests.

The net benefit to SBS as a result of its government ownership or other regulatory advantages, to the extent any exists, is unclear.

We note that some of these advantages and disadvantages do not automatically flow from government ownership, but rather from regulatory obligations imposed by government. In some cases it is difficult to separate the two and many of the regulatory obligations would be unlikely to be acceptable to a non-government owned entity. Therefore we consider it relevant to have regard to all the obligations placed on SBS by government when considering competitive neutrality. For the purpose of this analysis, the whole set of SBS’s regulatory advantages and disadvantages are considered.

### Public interest

If a particular area of SBS’s activity were to be identified as operating within a competitive market, and even if a net advantage were identified for SBS by virtue of its government ownership, SBS’s operations can still be consistent with competitive neutrality, if the public interest benefit from SBS engaging in this activity exceeds the cost associated with not complying with competitive neutrality. This ‘cost’ might be in the form of impacts to competitive markets – for example materially ‘crowding out’ other content or reducing advertising revenues.

The Issues Paper for the Inquiry notes that “*successive governments have decided that funding of the national broadcasters is in the public interest*”. The SBS Charter, as an expression of Parliament as to the purpose of this funding, should be the touchstone for determining what constitutes public interest for its activities. Beyond the Charter, SBS’s activities may broadly engage a number of different public interest objectives identified in the Competition Principles Agreement including: social welfare and equity; access and equity; economic and regional development; the interests of consumers generally or a class of consumers; and the efficient allocation of resources.

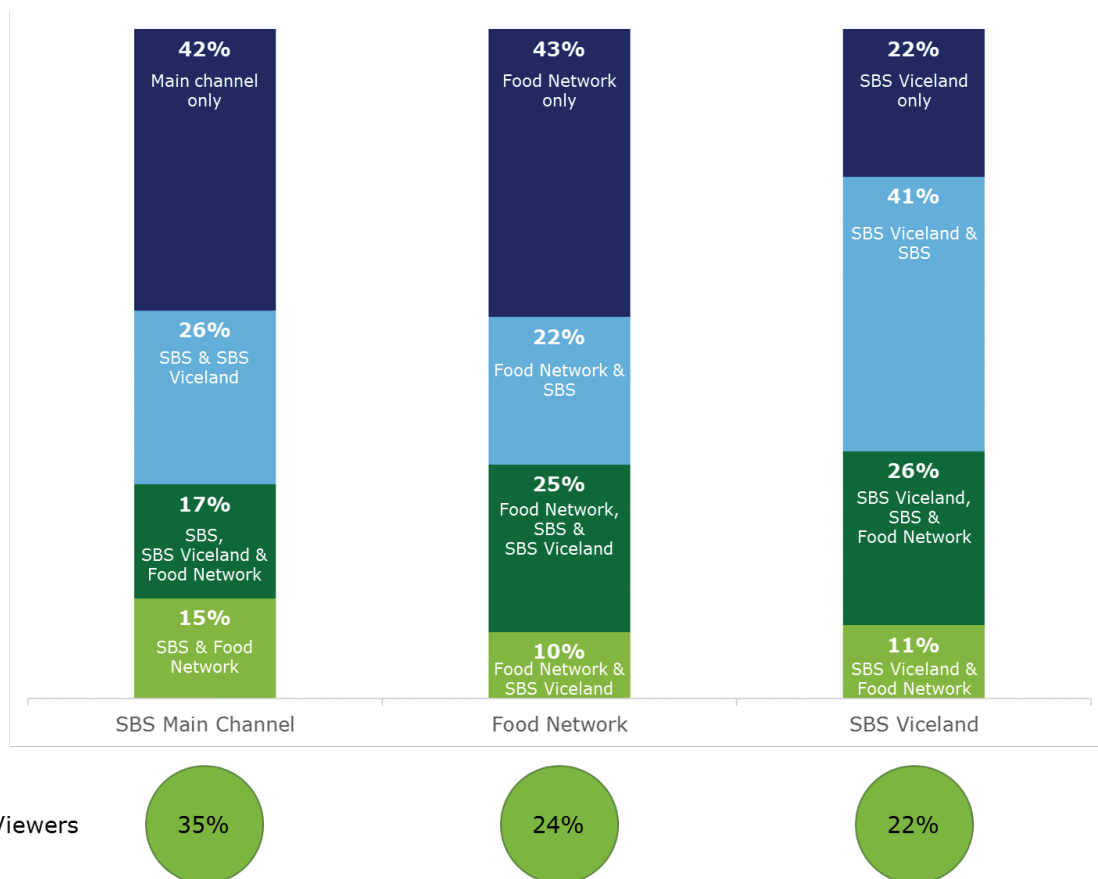
It should also be noted that material of broader appeal may nevertheless indirectly support the public interest by:

- **Providing advertising funds:** revenue from programs of broad appeal helps to support more niche content such as foreign language programming or content provided to specific groups in the community (e.g. new migrants);
- **Ensuring cost-efficient delivery of programs:** While SBS usually acquires content from a disparate range of distributors, sometimes rights holders sell a number of shows for one fee (‘bundling’). Acquiring content in bundles, where possible, may allow SBS to acquire more specific content efficiently, but can also assist to fill its schedule, which helps to use its broadcast hours efficiently and ensure scarce resources can be devoted to achieving its Charter objectives.
- Providing content with general appeal allows SBS to **cross-promote content** with a more direct connection to its Charter. Indeed, part of SBS’s principal Charter function is to inform, educate and entertain all Australians.

Figure 3.2 below shows the overlapping and unique shares of audience for viewing SBS, SBS VICELAND and Food Network. 22% of weekly audiences viewed only SBS VICELAND among these 3 stations; the number who viewed both SBS and SBS VICELAND was 41%. Similarly, 43% of weekly audiences viewed only Food Network, but a combined 13.6% viewed some combination of SBS or SBS VICELAND with Food Network. This suggests that audiences tend to be attracted to content across the SBS network, rather than just to one program. A similar story exists in relation to SBS On Demand.

# Appendices Appedix 1.1 (cont)

Figure 3.2: SBS weekly audiences (share of audience who view channel or combination of channels)



Source: SBS Brand Tracker Wave 12, Clarity Research, March 2018 (n=1005)

However, while recognising that SBS’s commercial activity forms part of a comprehensive service delivered to meet SBS’s Charter obligations, this ‘indirect public interest’ does not, in and of itself, mean that all such activities are permissible under competitive neutrality principles.

Even if it could be demonstrated that all three criteria in figure 3.2 were met and that competitive neutrality concerns may exist, a final step would be to examine whether any material detriment to competitive outcomes has actually occurred, or is likely to occur. This is not a straightforward task. However, we suggest the Inquiry consider the following factors which are drawn from Ofcom’s work in relation to the BBC.<sup>27</sup>

- Is competition likely to be adversely impacted rapidly or irreversibly?
- How similar are services to commercial offerings that currently exist or may emerge?
- Is the impact on competition in a new or embryonic market area?
- Are any competitors likely to be strongly affected by the change?
- In the case of impacts on audience – how many audiences are affected?
- What is the impact on commercial revenues for the affected broadcasters?

<sup>27</sup> Ofcom, *Assessing the impact of proposed changes to the BBC’s public service activities. A consultation on Ofcom’s procedures and guidance*. December 2016, p19, p

### Applying this approach to SBS

This section applies the approach set out in section 3.4 to the activities of SBS to help address Question 8 in the Issues Paper.

The wording used in the Issues Paper differs to that ordinarily used in the test of competitive neutrality in Australia. The Commonwealth's Competition Principles Agreement, and subsequent Competitive Neutrality Policy, put forward that government businesses "should not *enjoy any net competitive advantage* simply as a result of their public sector ownership" (emphasis added). Likewise, the OECD definition put forward in the Issues Paper focuses on whether entities in a market are "*subject to undue competitive advantages or disadvantages*" (emphasis added).

In assessing whether SBS is acting in a way that is consistent with competitive neutrality principles, the framework set out in Section 3.4 can be applied to its activities. As noted above, in order to attract advertising, SBS needs to show content that attracts audiences. In practice, this may result in some overlap between content on SBS and commercial FTAs or in SBS showing some content which may attract audiences away from commercial broadcasters. At the same time this content may help attract audiences to other content which may be closely connected to the SBS Charter or support other broader public interest objectives.

For this reason, there is value in considering competitive neutrality issues holistically rather than undertaking a line-by-line assessment of individual programs. The approach below sets out how competitive neutrality principles can be applied to SBS across its key activities:

- The market for advertising
- Content acquisition for SBS main channel
- SBS VICELAND
- Food Network
- SBS On Demand
- NITV
- World Movies.

#### 3.4.2 Competitive neutrality and advertising

##### Competition

As discussed in more detail in Chapter 2, SBS competes with FTA TV and radio, STV, digital platforms,<sup>28</sup> online news organisations such as Fairfax and News Corporation and highly visited digital vertical sites for advertising dollars.

##### Advantages and disadvantages of government ownership

In relation to advertising there are two potential competitive neutrality considerations:

1. SBS is able to use its government ownership to obtain more favourable terms from advertisers (either undercharging or overcharging);
2. SBS is able to use its government ownership status and government funding to purchase content that competes and attracts audiences from commercial market participants, indirectly reducing the size of its potential advertising revenues.

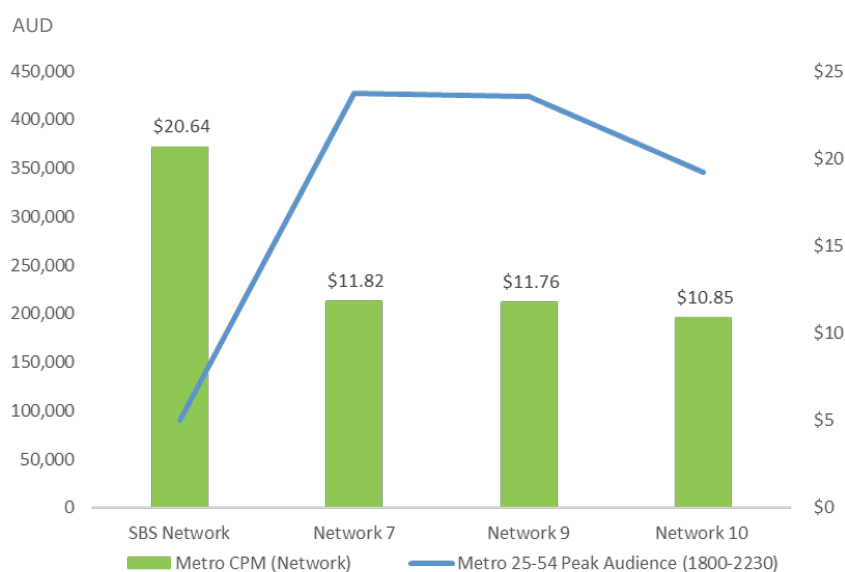
Industry data indicated that the average yield of advertising on SBS – measured as the average cost to reach one thousand audiences with a single advertisement – was between 50% and 100% higher than the equivalent cost for the commercial free-to-air broadcasters. There is no evidence that advertising rates are artificially low or effectively being subsidised from government funding.

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<sup>28</sup> For the purposes of this report, and consistent with the current ACCC Inquiry, the term 'digital platforms' encompasses digital search engines, social media platforms and other digital content aggregation platforms. This includes Google, Facebook and YouTube.

# Appendices Appedix 1.1 (cont)

Chart 3.1: Cost per thousand (CPM) for SBS and peak audience levels relative to commercial networks



Source: AdQuest (AQX) Standard Report, Metro Adex Analysis Board Reporting Template, 1/07/2016 - 30/06/2017, AQX Weekly. OzTAM Audience, Projection (P 25-54), Metro 5 City Panel plus Subscription, Projection: Consolidated to 28: July to June 2017

In interacting with advertising agencies, SBS is a price-taker in both television and digital markets. It is unlikely that advertising agencies would have an incentive to favour SBS purely on account of its government ownership rather than its relative reach.

SBS also noted that the fact that it could only advertise for 5 minutes per hour meant that it had more limited 'inventory' i.e. reach. SBS provided data for the 2016-17 financial year on the number of 30-second advertising units available during peak viewing hours (6:00 PM to 10:30 PM) for TV stations in metropolitan areas, along with the advertising revenue and audience available during this period. On the SBS main channel, 16,425 peak advertising units were available in the year, compared to 42,705 on each of the commercial networks. This places SBS at a disadvantage, particularly with certain advertisers who are looking to reach a large number of viewers within a short time period.

The combination of a lower number of available advertising units and the fact that SBS charges higher rates than other advertisers indicates that SBS does not benefit from its government ownership in respect of advertising.

### 3.4.3 Content acquisition for SBS main channel Competition

Much of the content on the SBS main channel is dissimilar to material that is shown on commercial networks:

- 58% of prime-time programming, and 73% of programming across the day, in the financial year 2017-18 (up to 17 April) was CALD.
- Much of this content is in LOTE, which are not broadcast on either the commercial broadcasters or the ABC.

CALD or LOTE content, once acquired, will still compete with other market participants for audiences even if it is by its nature very different content (and some of this content may equally be screened to some degree by another market participants e.g. Netflix). However, this content would seem to be clearly in line with SBS's Charter objectives and the public interest in showing this would generally be seen to outweigh any adverse impact, if any, on competitive neutrality.

When it does compete (besides competing in the market for advertising discussed above), SBS has attracted scrutiny from its commercial competitors in its acquisition of content with a broad general appeal. This has been a particular concern of commercial broadcasters in relation to high-profile English language drama programs, such as *The Handmaid's Tale*, *The Good Fight* and *The Night Manager* (which aired on Foxtel prior to SBS).<sup>29</sup> This content, in the view of commercial broadcasters, has a less clear connection to the SBS Charter than other content on SBS.<sup>30</sup> The process for acquisition and broadcast of this content is the focus of this section.

### **Advantages and disadvantages of government ownership**

The acquisition process for television content is largely controlled by distributors. Although a competitive bidding process applies, the actual amounts bid for programs remain commercially confident. Commercial broadcasters have argued that SBS has "driven up the cost of commercially attractive [drama] content".<sup>31</sup> In theory, SBS could use its government funding to bid above the 'commercially viable' price for this content, which in the absence of public interest benefits, could raise competitive neutrality concerns.

In practice, a number of factors drive the television bidding process, none of which are related to SBS's government ownership.

- As a small participant in the broadcast television market, SBS has incentives to pursue more cost-effective options for purchasing content.
  - SBS occasionally buys programs based on the script alone without waiting for sample episodes to be made for this reason: as Michael Ebeid described the process in Senate Estimates, "*The reason we do that is that we get it a lot cheaper than if we wait for the production to be made. Then we'd have to pay a lot more to see how well it does overseas. That is why we buy on script.*"<sup>32</sup>
  - Several successful SBS programs were also purchased in the 'second window' – that is, after the content has been shown on another network – or in 'bundles' with other content that may have a broader or narrower appeal.
  - Consultation with SBS suggests that relationships with distributors, and an alignment between the SBS brand and particular types of content, have also contributed to successful acquisitions.
- In any case, commercial broadcasters have proven able to outbid SBS for content that it originally showed. An example of this is the motoring show *Top Gear*. Seasons 5 to 13 of *Top Gear* aired on SBS; by Season 10 in 2007, *Top Gear* was regularly attracting more than one million audiences nationally in the SBS main channel Monday 7:30pm primetime slot. However, when the opportunity for the show to return to market arrived, Nine entered a significantly higher bid than SBS and the show moved networks in 2009. This suggests that while SBS may be able to identify potentially popular content at an early stage its advertising restrictions can limit its ability to bid competitively with commercial FTA broadcasters for popular content.

### **Public interest and detriment to competitive outcomes**

It is nonetheless likely that some content acquired for the SBS main channel competes with that on other networks, and at least some of this content is likely to be partly supported by government funding.

If this is the case, then public interest considerations need to be considered. An assessment of public interest is ultimately a subjective one and will depend on the nature of the content being considered. It should be noted that the mere fact that some content is popular does not prevent from being in the public interest, indeed there is clearly a public interest served by increasing consumer choice and providing a compelling product.

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<sup>29</sup> Hansard, Senate Environment and Communications Legislation Committee Estimates, 24 October 2017, p. 153.

<sup>30</sup> See, eg, Don Groves (2018) *Oz gov't launches pubcasters inquiry*: <http://www.c21media.net/oz-govt-launches-pubcasters-inquiry/>

<sup>31</sup> <https://www.theaustralian.com.au/arts/review/abc-under-fire-as-calls-for-quotas-on-local-content-gain-traction/news-story/570527de8f1513a3735447120b035893>

<sup>32</sup> Hansard, Senate Environment and Communications Legislation Committee Estimates, 24 October 2017, p. 153.

# Appendices Appendix 1.1 (cont)

However, where content is similar to that shown by other commercial entities, such content would be less likely to have direct public interest benefits (to the extent that such material or similar material may be provided elsewhere) and thus any public interest benefits will be indirect and related to:

- Advertising: As SBS's most viewed channel revenue from programs of broad appeal can support content with a narrower appeal
- Attracting audiences who will then go on to view other content e.g. LOTE and CALD content.

It should be noted that although it is SBS's most viewed channel, the SBS main channel attracts a small share of the free-to-air broadcast audiences: in 2018, throughout the day, SBS attracted 3.9% of the total market and 2.7% of the key 25-54 demographic. In prime time viewing hours, this increases to 5.1% of total market share and 3.4% of the 25-54 demographic based on data for the 2018 calendar year to date.

SBS main channel, as per its charter, provides public interest benefits by broadcasting a large proportion of CALD material as well as content of broader appeal. At the same time, its relatively small market share means that any impact on competition is likely to be low. On balance, based on our analysis of information available, any impact on competition is likely to be outweighed by public interest benefits. As such, SBS main channel as a whole is unlikely to be breaching competitive neutrality principles.

### **3.4.4 SBS VICELAND Competition**

SBS VICELAND, formerly known as SBS 2, emerged out of a content agreement in 2016 between SBS and US youth brand Vice. At launch, it was described as covering "culture, music, sports, fashion, technology and more from around the world".<sup>33</sup> SBS VICELAND airs a mixture of content provided by Vice, and content that formerly aired on SBS 2, some of which clearly has an international focus (for instance, Chinese dating show *If You Are The One*). Vice content, however, has attracted some concern from critics, particularly where there it is alleged there is not an obvious link to the SBS Charter.<sup>34</sup>

We note that in the financial year 2017-18 (up to April 2018), the proportion of CALD hours on SBS VICELAND has been 71% across the full day and 40% for programming with a prime time start (between 6:00 PM and midnight). Of this prime time content, as much as half has been in LOTE, a category not represented on other broadcasters.

However, some types of content on SBS VICELAND appear to be competing with commercial operators. For example, the long-running animated comedy *South Park* has been on SBS since SBS brought it to Australia in 1998; several recent seasons are now available on Stan. More recently, *Brooklyn Nine-Nine* has been on SBS 2 and SBS VICELAND since 2013, and was recently added to the Australian Netflix library. Although SBS has shown this content for some time (whether on the SBS main channel, SBS 2 or SBS VICELAND), there is nonetheless overlap with the interests of commercial operators (in this case, SVOD services).

### **Advantages and disadvantages of government ownership**

Confidential data from SBS provided in the context of this review suggests that SBS VICELAND is forecast to cover its avoidable costs in 2017-18 and make a modest return. Given that SBS VICELAND appears to be covering its avoidable costs, it does not appear that government funding currently provides SBS VICELAND with a material advantage to outbid commercial operators for content.

### **Public interest and detriment to competitive outcomes**

As noted above, most of the content on SBS VICELAND is culturally and linguistically diverse. Indeed, this was a driving factor in the formation of the SBS VICELAND partnership: SBS Managing Director Michael Ebeid said at the time "*Exploring diversity through culture is at the heart of SBS's purpose.*"

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<sup>33</sup> <https://www.sbs.com.au/news/the-feed/viceland-to-launch-in-australia-in-partnership-with-sbs>

<sup>34</sup> See, for example: <https://www.smh.com.au/entertainment/tv-and-radio/the-launch-of-sbs-viceland-may-be-audacious-but-its-also-wrongheaded-20161121-gst18v.html> 'Many of the programs running on Viceland could slot easily into the schedules of other FTA digital channels.'



The Vice content shown on SBS VICELAND approaches multiculturalism and diversity through a different lens to that of other SBS content. Nonetheless, many pieces of content on the network focus on topics of public interest: for example exposure to non-Anglo Saxon cultures<sup>35</sup> and social inclusion.<sup>36</sup>

**SBS VICELAND is forecast to cover its avoidable costs in 2017-18 (it has not done so in the past two years, largely due to costs associated with A-league coverage). Further, SBS VICELAND's market share is smaller than that of the SBS main channel, at 1.2% of prime-time audienceship, and only slightly higher among the desirable 25-54 market at 1.5%, and hence its impact competition in the market place is likely to be small. There is a strong case that it is complying with competitive neutrality principles.**

### 3.4.5 Food Network

#### Competition

Food Network was launched in 2015 on the basis of a content acquisition agreement with Scripps Networks Interactive. Like SBS VICELAND, the majority of content on the channel is sourced from an international partner. Unlike SBS VICELAND, however, the explicit aim of the network was to provide a self-sustaining source of commercial revenue.<sup>37</sup> Food-centric content has been a staple for commercial networks (both free-to-air and subscription) in recent years. On free-to-air television, competitive reality formats such as *Masterchef* (Ten) and *My Kitchen Rules* (Seven) share the airwaves with celebrity chefs such as Jamie Oliver (Ten), Luke Nguyen (SBS) and Nigella Lawson (ABC). Although SBS has traditionally shown a variety of food programming, that programming tends to focus on exploring culture through food and multicultural diversity.<sup>38</sup> As a result, Food Network is in a far more explicitly competitive space than either the main SBS channel or SBS VICELAND.

#### Advantages and disadvantages of government ownership

Food Network has an independent profit and loss statement and any additional costs are attributed to Food Network as part of its agreement with Scripps Networks Interactive. Food Network is generating a commercial return. Although food content is a highly competitive market, competitive neutrality does not prohibit SBS from competing in this market on commercial terms.

**As with SBS VICELAND, there is a strong case that the Food Network is complying with competitive neutrality principles, noting that it provides a financial return to SBS.**

### 3.4.6 SBS On Demand

#### Competition

SBS On Demand was first launched in 2011, combining exclusive content with 'catch-up' video content that was originally shown on SBS or its broadcast channels. SBS On Demand was among the first Australian video on demand (VOD) services to launch:

- ABC iView launched in 2008
- Seven's catch-up service 7plus, and Nine's original catch-up service FIXPlay (now 9Now), were each launched in 2010<sup>39</sup>
- Ten launched its separate catch-up service Tenplay in 2013<sup>40</sup>
- Local STV player Stan (owned by Fairfax and Nine) and international market leader Netflix both launched in 2015<sup>41</sup>
- Through various iterations of on demand services (including those reliant on cable TV boxes and a joint venture Presto with Seven), Foxtel (owned jointly by Telstra and News Corp Australia) launched its current online streaming service Foxtel Now in 2017<sup>42</sup>

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<sup>35</sup> For instance, *Hate Thy Neighbour*, a series focusing on racial 'hate groups' across the world, or *The Vice Guide to North Korea*, a documentary.

<sup>36</sup> For instance, the documentary *Gay Conversion Therapy*, or the *Trixie and Katya Show* starring 'drag queens' Trixie Mattel and Katya Zamolodchikova.

<sup>37</sup> <https://www.smh.com.au/business/companies/sbs-to-launch-24hour-food-channel-in-talks-with-government-over-funding-cuts-20150930-gjxwc6.html>

<sup>38</sup> See, for example, programs such as *Luke Nguyen's Food Trail* or *Poh & Co*.

<sup>39</sup> <https://tvtonight.com.au/2017/06/seven-to-launch-new-catch-up-platform.html>;

<sup>40</sup> <http://techgeek.com.au/2013/09/29/tenplay-soft-launches-network-tens-new-catch-service-compare/>;  
<https://tvtonight.com.au/2010/04/nine-launches-fixplay-video-catch-up.html>

<sup>41</sup> <https://www.theguardian.com/tv-and-radio/2015/jan/26/fairfax-and-nines-streaming-service-stan-launches-ahead-of-netflix-arrival>

## Appendices Appendix 1.1 (cont)

SBS On Demand, along with the catch-up services of the other free-to-air broadcasters, operates on an advertising-driven model, while Stan, Netflix and Foxtel Now are funded by user subscriptions.

Compared to the relative market share of its television channels in the traditional broadcasting market, SBS On Demand is relatively successful, yet still rates mid-range on market share compared to other VOD services as shown in Chart 2.7 above.

Much like SBS and SBS VICELAND, much of the content on SBS On Demand is distinctive from that shown on the other free-to-air networks. Even outside of catch-up content from the SBS broadcast channels, 71% of the hours of content on SBS On Demand are culturally and linguistically diverse (CALD). Around half of this content is in languages other than English. Netflix is the only other significant player in this market, with a considerable library of LOTE content.

Nevertheless, concerns have been raised that programs on SBS On Demand are too similar to that which might be shown on commercial operators' catch-up or subscription VOD services. The Issues Paper asserts that SBS On Demand is "directly competing" with subscription VOD services.

### **Advantages and disadvantages of government ownership**

It is not evident that SBS On Demand is using its government ownership to advantage over commercial players. Although SBS On Demand is a free service for the end user, deciding to offer this service on an AVOD basis is a commercial decision that other players could similarly choose to make as many have. Presumably, another private commercial operator could assemble a similar library of content and make it freely accessible with advertiser support; any advantage that SBS has in this task is arguably attributable to its historical brand and size, rather than to government ownership. Subscription-based VOD providers could do so as well.

Data indicates that SBS On Demand is projected to recover its costs in 2017-18.<sup>43</sup> While SBS On Demand has not fully covered its avoidable costs in the early years, its financial position has improved over time reflecting the initial investment required in starting SBS On Demand.

### **Public interest and detriment to competitive outcomes**

There are strong public interest arguments for providing content that connects with mainstream Australia on SBS On Demand. Data provided by SBS showed that:

- 14% of viewers of *The Handmaid's Tale* on SBS On Demand (a relatively dark drama that has proven popular with Australian audiences) also watched drama in languages other than English on the service;
- around 9.5% also watched *Insight*, an SBS staple current affairs program; and
- more generally, 24.4% of viewers of *The Handmaid's Tale* went on to view a LOTE drama, SBS commissioned series, or news or current affairs program on SBS On Demand.

The proportion of *Handmaid's Tale* viewers with overlap to other categories of SBS programming are outlined in Chart 3.2 below.

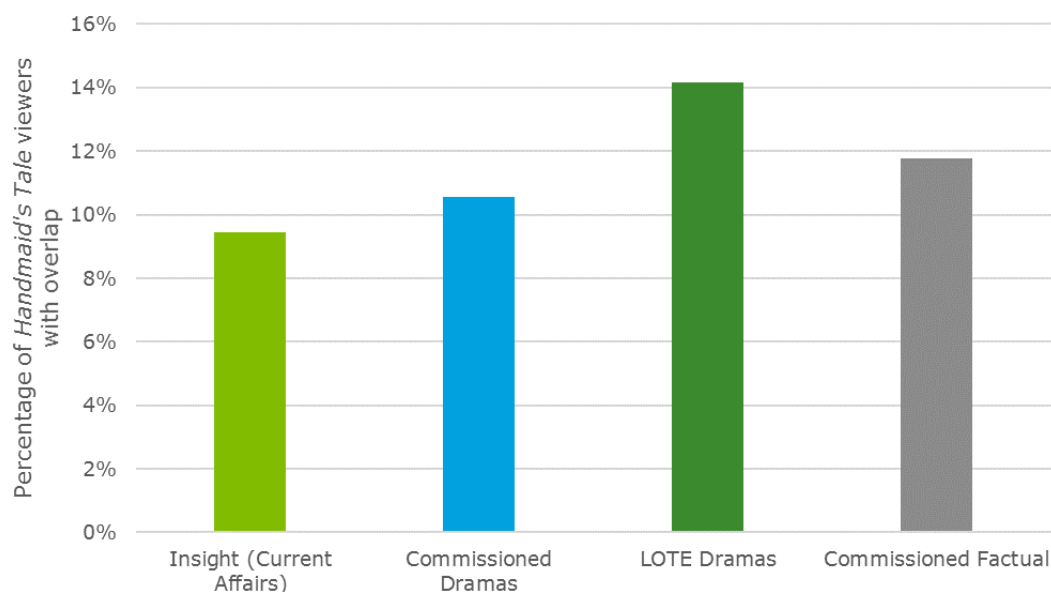
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<sup>42</sup> <http://www.news.com.au/entertainment/tv/foxtel-unveils-its-new-streaming-service-foxtel-now-from-10-a-month/news-story/3c559a4baa56839466dfc12779285b82>

<sup>43</sup> SBS On Demand's accounting statements do not incorporate the cost of catch-up rights for programs on SBS and SBS VICELANDSBS VICELANDSBS VICELANDSBS VICELAND. These are attributed to the network of original broadcast, as they are not always separated during transactions. At the same time some material purchased for On Demand can then be broadcast, so the net effect is likely to balance out.



Chart 3.2: Overlap between Handmaid’s Tale viewers and other SBS programming on SBS On Demand



This suggests that the availability of some popular content *on a service where other content can be immediately viewed* helps to encourage users to explore that other content – broadening the reach of content that clearly fulfils SBS’s public interest goals.

Further, commercial free-to-air catch-up services are limited by comparison, hosting a smaller range of content for a shorter period of time. SBS On Demand is consequently a unique offering, particularly in its LOTE and broader CALD content, which supports consumer choice. Indeed, SBS is compelled to offer digital media services by its Charter to ensure it reaches all Australians.

**SBS On Demand, like the SBS main channel provides public interest benefits by broadcasting a large proportion of CALD material as well as content of broader appeal and in so doing helps fulfil SBS’s charter requirement to provide digital media services to the public. SBS On Demand is also projected to recover its incremental costs in 2017-18 indicating that it currently operates largely independently of government funding. On balance, based on our analysis of information available, any adverse impact of SBS on Demand on competition in the market is likely to be outweighed by public interest benefits. As such, SBS On Demand as a whole is unlikely to be breaching competitive neutrality principles.**

#### 3.4.7 NITV

NITV largely serves SBS’s public interest objectives and attracts a very small audience share of 0.2% to 0.3% in most metropolitan and regional markets. As a result, it is unlikely to create competitive neutrality concerns.

#### 3.4.8 World Movies

SBS has offered World Movies as a subscription television business supplying channels including the “World Movies” branded channel and now branded VOD destinations since 1995. World Movies is currently a branded VOD destination on all Foxtel streaming and catch up services including Foxtel Now, and the STAN SVOD service. The World Movies channel ceased on Foxtel at the end of January 2018 and was replaced by a branded destination on Foxtel services and a weekly branded block on the Foxtel subscription TV “Masterpiece” movies channel. SBS curates international and arthouse movies from distributors worldwide as part of this service. This service is both in line with SBS’s Charter obligations to provide multicultural and multilingual content and it also generates a commercial return for SBS suggesting that in providing World Movies is unlikely to be violating competitive neutrality principles.

# Appendices Appendix 1.1 (cont)

## 3.5 Addressing question 13 in the issues paper: balance between competing and complementing?

**Question 13: From your perspective do the national broadcasters seek a balance between competing in the market and complementing the market? Is that balance the same for traditional broadcasting and for new digital platforms?**

The SBS Charter specifically permits SBS to engage in commercial activities including advertising under sections 45 and 45A of the *SBS Act 1991* (Cth). As a result, SBS is permitted to compete with other entities in attracting advertising revenue. Similarly, from a competitive neutrality perspective SBS is permitted to compete vigorously (and doing so would be consistent with competition principles) as long as it does not use its government ownership in a way that gives it an unfair competitive advantage over its competitors.

Thus from a competitive neutrality perspective there is no requirement for SBS to balance the need to compete and complement the market- subject to the other requirements of competitive neutrality it is free to compete with other broadcasters and content providers on other platforms.

At the same time, the SBS Charter sets out an objective for SBS to contribute to the overall diversity of Australian and radio television services. Any (explicit or implicit) mandate that exists for SBS to complement the market would appear to arise from its Charter and not from competitive neutrality principles.

As discussed earlier in this Chapter, showing content which competes or overlaps with content shown by other broadcasters does not necessarily mean it is not in the public interest. This means it is difficult to assess individual pieces of content as “competing” or “complementing” with the market. Ultimately a better approach to assessing compliance with competitive neutrality relies upon assessing whether SBS is acting in the public interest broadly through its activities, considering the totality of its activities.

The precise balance to be struck between competitive material which is similar to that offered elsewhere and complementary material which extends the diversity of content available should ultimately be assessed in terms of the extent to which SBS as a whole serves the public interest. If SBS only presented the same or similar content to other market participants then it would not meet some of its Charter requirements. It could also fairly be accused of using its government funding advantage and not being able to demonstrate public interest benefits from doing so.

However, if SBS simply showed niche ‘complementary’ content it would be unlikely to serve all the objectives of its Charter including its role in promoting multicultural content and entertaining all Australians.

Ultimately there are multiple ways SBS could meet its Charter and competitive neutrality requirements – for example by offering a broad range of content not shown elsewhere or a smaller subset of high quality content not shown elsewhere that achieves a larger impact either by more directly meeting the Charter objectives or attracting broader audiences.

The issue for the review should be whether SBS’s activities as a whole are consistent with competitive neutrality and its balance of content (across both traditional and new broadcasting platforms) serves its broader public interest objectives.

# 4 Regulatory advantages and disadvantages

## Key points

- There are a range of government support and regulatory advantages and disadvantages that apply both to SBS and other broadcasters in the market. The impact of many of these regulations on the relative playing field is difficult to measure.
- The main regulatory advantages for the national broadcasters are the direct government funding and access to spectrum they receive. The main regulatory requirements that constrain the national broadcasters are: the advertising restrictions in place (which limit their ability to raise commercial revenue) as well as the need to act in accordance with their Charter obligations and obligations as a public entity.
- The main regulatory advantages for the commercial FTA broadcasters are access to spectrum (which is generally valued above the cost of spectrum charges), anti-siphoning legislation and the prohibition on a fourth commercial broadcast licence. The main regulatory disadvantages for the commercial FTA broadcasters are the need to meet local content requirements (recognising that some of these would be met anyway) and restrictions on media ownership some of which have been relaxed recently.
- While it is not possible to precisely cost the myriad of regulations that apply to the sector, it is possible to examine the level of government support and regulatory advantages provided to each of the market participants over time.
- Relative to 2013-14, annual government funding for the national broadcasters has fallen by 3.1% (SBS has seen a fall of \$9.7 million in annual funding or 3.4% and ABC has had its funding decrease by \$33 million or 3.1% while some regulatory restrictions on commercial FTA broadcasters have eased and spectrum pricing (which replaced licence fees) is 72.3% or \$105 million per annum less than the value of licence fees in 2013-14).
- Overall, the trajectory of regulatory changes in recent years has broadly favoured the commercial FTA broadcasters relative to the national broadcasters.

This chapter addresses the second dot point listed in the Terms of Reference for the review, namely 'the regulatory obligations for ABC and SBS compared to those for private sector operators'. It also addresses the first part of Question 9 in the Issues Paper:

*What is the differential impact of regulation on commercial and national broadcasters, and is there evidence of consequent adverse impact on competition and outcomes?*

This analysis is relevant because an important element of competitive neutrality is whether a business enjoys a net competitive advantage because of its government ownership. While the national broadcasters receive government funding and access to spectrum, they also face material restrictions as a government entity via advertising restrictions, Charter obligations and public entity obligations and accountability requirements.

We note that some of the advantages and disadvantages discussed in this Chapter do not automatically flow from government ownership, but rather from regulatory obligations imposed by government. In some cases it is difficult to separate the two and many of the regulatory obligations would be unlikely to be acceptable to a non-government owned entity. Therefore we consider it relevant to have regard to all the obligations placed on SBS by government, and indeed Question 9 asks us to do so.

Similarly, commercial broadcasters are not subject to legislative advertising restrictions like the national broadcasters or public entity obligations. However they are required to comply with local content rules and have advertising restrictions within the Commercial TV Industry Code of Practice and obligations such as the Children's Television Standards 2009.

Both community and subscription TV broadcasters (STV) receive some funding from government and benefit from the restriction on the fourth commercial television licence. The key regulatory disadvantages experienced by STV include local content rules in relation to drama expenditure and the anti-siphoning scheme.

# Appendices Appendix 1.1 (cont)

Table 4.1 below gives an overview of the regulatory advantages and disadvantages for national broadcasters relative to other participants in the television broadcasting market.

Table 4.1 Forms of regulatory advantage and disadvantage for the national broadcasters relative to other market participants

Source of regulatory advantage/ disadvantage	Position of national broadcasters relative to commercial FTA broadcasters, community TV and STV
<b>Government funding</b>	<ul style="list-style-type: none"> <li>• Advantage to the national broadcasters</li> </ul>
<b>Access to spectrum/Licence fees<sup>^</sup></b>	<ul style="list-style-type: none"> <li>• Advantage to both national broadcasters and commercial FTA broadcasters.</li> <li>• Commercial FTA broadcasters are charged for access to spectrum, though this is heavily discounted relative to the value of spectrum. The amount paid per annum been reduced by 72% since 2013-14 with the reduction and abolition of licence fees and implementation of spectrum pricing at a lower rate (see section 4.3.5)</li> </ul>
<b>Income tax exemption</b>	<ul style="list-style-type: none"> <li>• Advantage to national broadcasters</li> </ul>
<b>Local Content Rules</b>	<ul style="list-style-type: none"> <li>• Disadvantage for commercial FTA broadcasters. Less restrictive content rules on drama also apply to STV relative to commercial broadcasters.</li> </ul>
<b>Charter obligations</b>	<ul style="list-style-type: none"> <li>• Constrains the operation of the national broadcasters in terms of the content they focus on relative to commercial and STV broadcasters</li> </ul>
<b>Public entity obligations and accountability requirements</b>	<ul style="list-style-type: none"> <li>• Disadvantage to national broadcasters</li> </ul>
<b>Anti-siphoning legislation</b>	<ul style="list-style-type: none"> <li>• Provides an advantage to national broadcasters and commercial FTA broadcasters. Commercial FTA broadcasters gain the greatest monetary value from this regulation due to restrictions on advertising for the national broadcasters which limits their ability to bid for many of premium sporting events.</li> </ul>
<b>Restriction on advertising</b>	<ul style="list-style-type: none"> <li>• Disadvantage to national broadcasters</li> </ul>
<b>Prohibition on 4<sup>th</sup> commercial licence</b>	<ul style="list-style-type: none"> <li>• Advantage to all sectors as it reduces competition in the market but likely to have a more material financial impact on commercial FTA broadcasters.</li> </ul>
<b>Screen Australia funding</b>	<ul style="list-style-type: none"> <li>• Applies to all market participants</li> </ul>
<b>Tax offsets</b>	<ul style="list-style-type: none"> <li>• Applies to all four broadcast sectors through provision of tax offsets to production companies</li> </ul>
<b>Captioning requirements</b>	<ul style="list-style-type: none"> <li>• Applies to all four broadcast sectors</li> </ul>

Source: Deloitte Access Economics

Note: <sup>^</sup>The spectrum provided to the commercial broadcasters is of greater value than that provided to the national broadcasters (see Appendix A for details)

† In practise the advertising restrictions on SBS means that it benefits less from these regulations than commercial FTA broadcasters.

The extent to which this range of regulatory advantages and disadvantages can affect competition and outcomes in the market ultimately depends on the behaviour of market participants. SBS gains an advantage from the government funding it receives but is limited in its ability to raise revenue of its own due to advertising restrictions. If this government funding was used solely to acquire programs that would otherwise have been shown by other segments of the market, there is scope for SBS to have a negative impact on competition by using their receipt of government funding to gain an unfair advantage on their commercial competitors.<sup>44</sup>

However, if government funding is used to achieve broader public interest objectives by extending consumer choice and offering content that satisfies the objectives in its Charter then the potential impact on competition will be much lower and outweighed by the positive impact on consumer outcomes. Thus whether or not SBS is able to use any regulatory advantages to impact competition will largely depend on the operational decisions they make. Nonetheless, understanding the nature of the regulatory advantages and disadvantages that apply to SBS is useful in assessing the extent to which they act in ways that are consistent with competitive neutrality. The following sections examine the key regulatory advantages and disadvantages facing different market participants.

Table 4.2 summarises the recent quantitative changes to government support for the national broadcasters and the commercial FTA broadcasters. Relative to funding in 2013-14, SBS has seen its annual funding fall by \$9.7 million (3.4%) while commercial FTA broadcasters benefitted from the reduction and subsequent abolition of licence fees and their replacement by spectrum pricing at a lower rate which has reduced the amount of charges they pay to government by \$104.6 million per annum.

Table 4.2: Value of changes to regulatory arrangements per year (2017-18 relative to 2013-14)

Broadcaster	Change since 2013-14
SBS	-\$9.7 million (-3.4%)
ABC	-\$33 million (-3.1%)
Commercial FTA	\$104.6 million (72.3%)

Source: Deloitte Access Economics

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<sup>44</sup> In some cases the receipt of government funding may not be sufficient to outbid the commercial FTA broadcasters where programs are likely to attract large audiences and hence advertising revenues.

# Appendices Appedix 1.1 (cont)

## 4.2 National broadcasters

This section sets out the range of forms of government support provided to SBS and the ABC as well as key regulatory advantages relative to other market participants. Table 4.3 sets out the value of regulatory support and funding provided to the national broadcasters.

Table 4.3: Value of regulatory support/funding to National Broadcasters (\$ million)

Type of support (2017-18)	Total	Change since 2013-14	SBS	Change since 2013-14	ABC	Change since 2013-14
<b>Government Funding</b>	1324	-3.2%	280.1	-3.4%	1,044	-3.1%
<b>Value of access to Spectrum (annualized value)^</b>	307.7	Not calculated	121.4	Not calculated	186.3	Not calculated
<b>Prohibition on 4<sup>th</sup> commercial licence*</b>	33.6	Estimate not provided	33.6	Estimate not provided	Estimate not provided	Estimate not provided
<b>Total</b>	1,665		435.1		1,230	
<b>Digital switchover, Screen Australia funding, tax offsets</b>	Funding accrues to multiple broadcasting sectors	See appendix	See appendix	See appendix	See appendix	See appendix

Source: Deloitte Access Economics

\*Assumes SBS has 2% of overall advertising revenue, therefore they derive 2% of the value of the prohibition on the 4<sup>th</sup> commercial broadcaster estimated in section 4.3.3. Value of spectrum assumes ABC and SBS both have equal proportion of broadcasting spectrum and only ABC has access to ENG spectrum (see Appendix A for further discussion).

^See Appendix for further discussion on figures.

Table 4.4: Forms of regulatory advantage and disadvantage for national broadcasters not valued

Regulatory advantage not valued	Regulatory disadvantage not valued
Anti-siphoning legislation (of less value to national broadcasters than commercial broadcasters due to advertising restrictions)	Charter obligations
Corporate income tax exemption	Public entity obligations
	Captioning requirements

Source: Deloitte Access Economics

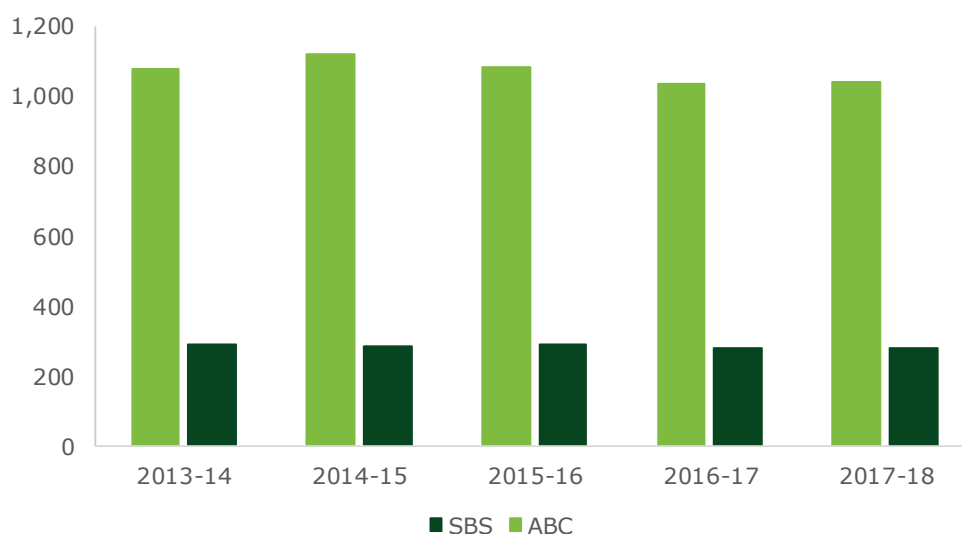
#### 4.2.2 SBS and ABC funding

Both SBS and the ABC receive government funding to support their broadcasting and operational activities. This funding is the main channel through which government ownership advantages the national broadcasters.

According to the Department of Communication and Arts (DCA) Portfolio Budget Statements (PBS) in 2017-18 total government funding for SBS was \$280.1 million. The amount of government funding provided to the ABC in 2017-18 was \$1,044 million.

Chart 4.1 below shows funding to the national broadcasters from 2013-14 to 2017-18. Both the ABC and SBS saw a fall in their nominal funding levels of 3.1 and 3.4 per cent respectively over this period.

Chart 4.1: National broadcasters funding (\$ million)



Source: DCA PBS

The 2018-19 Budget froze the indexation of ABC from 2019-20 onwards. As discussed below, SBS received appropriations of \$8.7 million in 2018-19 and \$5.9 million in 2019-20, to reinstate funding that was removed in anticipation of legislation making favourable changes to the advertising restriction. This legislation failed to receive Senate approval and has since been withdrawn.

#### 4.2.3 Charter obligations

The provision of national broadcasting services by the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Services (SBS) is authorised by other legislation, as these services are not licensed under the Broadcasting Services Act. Instead of being licensed, these services are authorised by their respective enabling Acts (i.e. the *Australian Broadcasting Corporation Act 1983*, the *Special Broadcasting Service Act 1991* and the *Parliamentary Proceedings Broadcasting Act 1946*).

In the case of SBS, the SBS Charter sets out the principal functions of SBS and a number of duties it has to fulfil. According to the SBS Charter, the principal function of the SBS is to "provide multilingual and multicultural radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society."<sup>45</sup> The obligation to adhere to the Charter means that SBS is required to focus on providing content that is consistent with its charter objectives, whereas commercial broadcasters do not face this constraint.

<sup>45</sup> *Special Broadcasting Service Act 1991* (Cth) s 6(1).

## Appendices Appendix 1.1 (cont)

Much of the content that SBS shows in delivering its Charter commitments would not be viable through advertising alone. Commonwealth funding supports SBS in showing this type of content. Although Charter obligations do present a regulated restraint on SBS's commercial operations, it is not strictly true that these obligations are an automatic or necessary consequence of its government ownership.

### 4.2.4 Other obligations imposed on SBS and the ABC as public entities

SBS and ABC are corporate Commonwealth entities for the purpose of *the Public Governance, Performance and Accountability Act 2013* (Cth) ('the *PGPA Act*'). As such, the business of each of the public broadcasters differs in a number of ways from a commercial broadcaster.

In the case of SBS, the *SBS Act*, and government ownership more broadly, restrains the behaviour of SBS in a number of other ways:

- SBS is accountable to Parliament and can be compelled to explain decisions around its expenditure and activity at Senate Estimates. Although the commercial broadcasters are accountable to shareholders through the provisions of the *Corporations Act 2001* (Cth), and can be compelled to appear before parliamentary committees, they are not held to the same standard and regularity of parliamentary scrutiny as Commonwealth entities like SBS.
- SBS requires permission from the Commonwealth Finance Minister to take on private debt.<sup>46</sup> This could potentially limit SBS's ability to make longer-term investments in its infrastructure or programming relative to the commercial broadcasters.
- The Board of SBS is appointed by the Government (though it is independent of Government).
- The remuneration of the Managing Director, and non-executive directors, are set by the Remuneration Tribunal.<sup>47</sup> For other staff, SBS negotiates an Enterprise Bargaining Agreement, which covers around 60% of employees; the remaining 40% are employed under common law employment contracts. The Enterprise Bargaining Agreement, and the external salary-setting process for directors, may limit SBS's ability to compete against other large organisations to attract staff.
- SBS is also required to publish de-identified salary and remuneration data for highly paid employees. SBS publishes these details on both its website and in annual reports. This level of transparency acts as a restraint relative to commercial broadcasters that don't face such significant reporting obligations on senior employees.

These restrictions hamper the ability of SBS to attract skilled staff to its organization. SBS cannot compete with the commercial and subscription broadcasters in terms of remuneration for executives and must differentiate itself by developing its brand and emphasising its role as a broadcaster of unique content. The increased accountability for SBS executives also means greater scrutiny from legislative bodies over content and programs, a restriction that executives at commercial and subscription broadcasters are not subject to.

Other obligations for SBS include the Senate Order for Entity Contracts whereby SBS is required twice a year to publish a list of contracts entered into which provide for a consideration to the value of \$100,000 or more and which

(a) have been entered into during the previous 12 months, or

(b) were not fully performed at the end of the period. The estimated cost of complying with this Order in 2016-17 is \$19,350.<sup>48</sup>

Senate Continuing Order No. 5 (also known as the Harradine Order) requires all Australian Government departments and agencies (including SBS) to produce an indexed list of files every six months for tabling before parliament.<sup>49</sup>

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<sup>46</sup> Ibid s 60.

<sup>47</sup> Ibid ss 23, 32.

<sup>48</sup> <https://www.sbs.com.au/aboutus/corporate/view/id/1913/h/Senate-Order-Entity-Contracts>

<sup>49</sup> <https://www.ag.gov.au/Publications/Pages/SenateContinuingOrderFileLists.aspx>



Table 4.5 below details average total remuneration for executives at SBS, ABC and the three commercial broadcasters. This, rather simple, analysis does not take into account the complexity and size of the operations of the various organisations - SBS is by far the smallest of the entities in the table (in terms of revenue) - or consider the roles and responsibilities of the executives. However it does demonstrate there is a significant gap in remuneration - SBS executive salaries are less than half that of the lowest commercial competitor.

Table 4.5: Average executive remuneration 2016-17 (\$)

Broadcaster	Average Executive Remuneration
<b>SBS</b>	401,123
<b>ABC</b>	485,162
<b>Seven</b>	845,070
<b>Ten</b>	1,521,421
<b>Nine</b>	1,884,857

Source: Broadcaster annual reports. Note: Ten Network figure from 2015-16. For commercial broadcasters executives are defined as 'key management personnel executives' while for SBS it refers to the ten 'substantive executives' as defined in its annual report. and ABC the 'Leadership Team', in this context, executives are those persons having authority and responsibility for planning, directing and controlling the activities of the entity. This definition from the annual reports largely capture the senior executives in each broadcaster. It does not include board members/non-executive directors.

#### 4.2.5 SBS advertising restrictions

SBS is only authorised to broadcast advertisements or sponsorship announcements for 5 minutes per hour of broadcasting compared with commercial broadcasters who can advertise for 13 to 16 minutes per hour depending on the time of day and type of channel.<sup>50</sup> SBS also has a 120 minute daily cap on advertising, below the 350 minutes per day that commercial broadcasters are allowed to devote to advertising.<sup>51</sup> The 5 minute allowance does not include material publicising programs to be broadcast by SBS, or community service announcements.<sup>52</sup> Commercial broadcaster also have exemptions for materials that are not included in their advertising limits including promotion for programs, election announcements, and community service announcements.

In addition, SBS Codes of Practice and Editorial Guidelines place significant limits on program and segment sponsorship which do not apply to commercial FTA broadcasters.

This restriction on advertising limits the potential advertising minutes available on SBS relative to commercial free-to-air broadcasters and thus acts as a source of competitive disadvantage. Some estimates of the cost of this restriction on advertising minutes were considered in a previous proposal to permit SBS to allocate its 120 minutes of advertising to prime time viewing and popular sporting events. The impact on SBS advertising revenue from this proposal was estimated to range from \$7 million to \$37 million across different studies.<sup>53</sup> These figures suggest the cost of these advertising restriction on SBS are material. It is important to note that these estimates reflect the impact of not being able to reallocate existing advertising minutes and as such do not increase the number of advertising minutes available to SBS to the same degree that exists for the commercial broadcasters who are not subject to a 120 minute daily cap.

<sup>50</sup> [http://www.freetv.com.au/media/Code\\_of\\_Practice/Free\\_TV\\_Commercial\\_Television\\_Industry\\_Code\\_of\\_Practice\\_2018.pdf](http://www.freetv.com.au/media/Code_of_Practice/Free_TV_Commercial_Television_Industry_Code_of_Practice_2018.pdf)

<sup>51</sup> <https://www.sbs.com.au/aboutus/news-media-releases/view/id/946/h/SBS-welcomes-and-supports-the-Communications-Legislation-Amendment-SBS-Advertising-Flexibility-and-Other-Measures-Bill-2015>

<sup>53</sup> See the Free TV and SBS submissions to the SBS Advertising Flexibility and Other Measures Bill 2015, the Explanatory Memorandum to Communications Legislation Amendment (SBS Advertising Flexibility) Bill 2017 and the Lewis Efficiency Study, also known as ABC and SBS Efficiency Study.

## Appendices Appedix 1.1 (cont)

As a result of the Lewis Efficiency Study, SBS received a funding cut of \$53.7 million over five years<sup>54</sup>, with \$28.5 million of this cut premised on legislation passing to increase the advertising flexibility of SBS based on retaining the 120 minute daily cap. These proposed advertising changes did not proceed, as the legislation did not pass the Senate. Funding that was removed from SBS in anticipation of these changes was reinstated as follows: SBS received \$4.1 million in the 2015-16 Budget; \$6.9 million in the 2016-17 Budget, and \$8.8 million in the 2017-18 Budget. In the 2018-19 Budget \$8.7 million was appropriated for 2018-19 and \$5.9 million in 2019-20.<sup>55</sup>

### 4.2.6 Corporate income tax exemption

Both the ABC and SBS, as government entities, are not subject to corporate income tax, unlike the commercial broadcasters, which face a headline rate of 30%.

Given that corporate income tax is levied on profits, this is a relatively small benefit to SBS given it does not typically generate large profits. In 2016-17 SBS reported a deficit of \$2.049 million (due to a one-off technical accounting adjustment related to an intangible asset, otherwise a surplus of \$0.636 million would have been recorded). Table 4.7 below shows SBS financial results from 2013-14 to 2016-17. The surpluses made in each year are small relative to commercial broadcasters and would not necessarily attract a significant tax obligation.

Table 4.6: SBS surplus/deficits (\$ million)

Financial Results	2013-14	2014-15	2015-16	2016-17
SBS surplus / (deficit)	0.43	0.345	0.340	(2.049)

Source: SBS Annual Reports

### 4.3 Commercial FTA broadcasters

The licensing of commercial broadcasting services is set out under Part 4 of the Broadcasting Services Act. These licences will continue to remain in force for five years under sections 45 of the Broadcasting Services Act (with the exception of commercial television satellite licences that will continue in force for 10 years). ACMA will continue to be obliged to renew these licences under section 46 of the Broadcasting Services Act, unless the applicant is identified as unsuitable.<sup>56</sup> In effect, this acts as a de facto perpetual licence with broadcasters viewing the renewal as a virtual certainty. Ten Network noted in its 2016 annual report they have "no reason to believe that the licences will not be renewed in due course".<sup>57</sup>

In relation to SBS, the most significant regulatory advantage for commercial FTA broadcasters is their greater scope to attract advertising revenue since they are not subject to the same restrictions which apply to SBS. They also have greater scope to focus on showing programs of popular appeal rather than a mix of programming to meet specific Charter obligations (as is required of SBS). SBS advertising revenue in 2016-17 was just 2% of the over \$3 billion for the commercial FTA advertising market (see section 2.4).

<sup>54</sup> <https://www.sbs.com.au/aboutus/news-media-releases/view/id/965/h/Statement-from-SBS-Managing-Director-Michael-Ebeid-regarding-the-Communications-Legislation-Amendment-SBS-Advertising-Flexibility-and-Other-Measures-Bill-2015>

<sup>55</sup> [https://www.sbs.com.au/news/budget-2018-funding-freeze-for-abc-boost-for-sbs\\_2](https://www.sbs.com.au/news/budget-2018-funding-freeze-for-abc-boost-for-sbs_2)

<sup>56</sup> Broadcasting Spectrum Consultation paper <https://www.communications.gov.au/have-your-say/consultation-new-spectrum-legislation>

<sup>57</sup>

<https://images.tenplay.com.au/~media/Corporate%20Site%20Media/Files/Annual%20Reports/2016%20Annual%20Report.pdf>

The prohibition on 4<sup>th</sup> commercial broadcast licence and anti-siphoning legislation benefits both the commercial and national broadcasters but in practice benefits commercial FTAs to a much greater extent because of their scope to raise advertising revenues and bid for premium content. Local content rules constitute a regulatory disadvantage to commercial broadcasters. However, only some sub-quotas of these rules are a disadvantage since many forms of Australian content is popular. All commercial broadcasters have far surpassed the overall quotas for Australian content in recent years (see Appendix A for further discussion on local content rules) but often show close to the minimum sub-quota for first release drama, children’s programs and documentaries. These latter categories would appear to place some regulatory burdens on commercial FTA broadcasters.

Other advantages such as access to broadcasting spectrum are common to both commercial FTA broadcasters and the national broadcasters (further discussion on the valuation of spectrum is detailed in Appendix A). Regulatory restraints around media ownership and licence fees and charges for use of spectrum have eased substantially over the last five years, vastly improving the relative competitive position of the commercial FTA broadcasters.

Further details on assistance for television production, the digital switchover and captioning requirements are available in sections Appendix A.

Table 4.7 sets out the estimated value of regulatory support provided to commercial broadcasters and Table 4.8 sets out other forms of regulatory advantages and disadvantages which apply to the commercial FTA broadcasters but are not explicitly valued in this report.

Table 4.7: Value of regulatory support/funding to commercial broadcasters (\$ million)

	2017-18	Change since 2013-14
Access to spectrum	558.8	No estimate provided
Prohibition on 4 <sup>th</sup> commercial licence <sup>^</sup>	1680	No estimate provided
Licence fee/spectrum pricing*	40 (expected payment to government)	104.6 (72.3%)
<b>Total</b>	2,199	
Digital switchover, Screen Australia funding, tax offsets	Funding accrues to multiple broadcast sectors	See Appendix A

Source: Deloitte Access Economics

Note: <sup>^</sup> Book value of licence fees (see section 4.3.3 for further discussion). \*Spectrum pricing replaced licence fees that were abolished in 2016-17.

Table 4.8: Forms of regulatory advantage and disadvantage not valued

Regulatory advantage not valued	Regulatory disadvantage not valued
Anti-siphoning legislation	Local Content Rules
Prohibition on 4 <sup>th</sup> commercial licence	Captioning Requirements
	Media ownership rules

Source: Deloitte Access Economics

# Appendices Appendix 1.1 (cont)

## 4.3.2 Media ownership rules

The general assumption that markets operate most efficiently without government intervention means that laws that restrict media ownership distort the allocation of resources in the broadcasting market and limit the scope for expansion by commercial FTA broadcasters through mergers and acquisitions. At the same time it should be noted that were media ownership rules removed, mergers and acquisitions may still be blocked by the ACCC if they have the effect, or would be likely to have the effect, of substantially lessening competition.

In principle, the presence of media ownership laws that restrict ownership could benefit all broadcasters to the extent that they restrict competition. However, the ability of SBS to benefit from media ownership rules is limited by advertising restrictions. The restriction on competition limits the quantity of advertising available and drives up the price, benefiting commercial broadcasters more than SBS.

In October 2017 the Commonwealth Parliament passed the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*.<sup>58</sup> Under the reforms, the Government repealed two media control and ownership rules in the Broadcasting Services Act 1992 that currently prevent a person from controlling:

- Commercial television licences that collectively reach in excess of 75 per cent of the Australian population (the '75 per cent audience reach rule'); and
- More than two of the three regulated forms of media (commercial radio, commercial TV and associated newspapers) in the one commercial radio licence area (the '2 out of 3 rule').

Maintained is the 'one-to-a-market' rule in which a person, either in their own right or as a director of one or more companies, must not be able to exercise control of more than one commercial television broadcasting licence in a licence area.

An indication of the value to the commercial broadcasters can be seen in the increase in market value of the broadcasters following the announcement by the government to reform media the media laws. When the market opened on Monday 8<sup>th</sup> May following the announcement the collective value of the three commercial broadcasters increased approximately \$117 million,<sup>59</sup> with this increase in market value largely reflecting the news that media ownership laws will be lifted.

In addition to the above changes, local content rules were also modified (see Appendix A). More restrictions on gambling advertising were also introduced during live sports programs on commercial and subscription TV (and SBS).<sup>60</sup> Gambling advertisements will not be able to be shown from five minutes before a live sports event commences, during the event and for five minutes after the event has concluded. The restrictions will apply between 5.00am and 8.30pm.

## 4.3.3 Prohibition on entry of 4<sup>th</sup> commercial broadcaster

Section 37A of the Broadcasting Services Act states that ACMA must ensure that the number of commercial television broadcasting licences that:

- have the same licence area; and
- are broadcasting services bands licences;

does not exceed three.<sup>61</sup>

One way of valuing the restriction of entry of a 4<sup>th</sup> commercial broadcaster would be to use the book value of licenses held by the commercial broadcasters in their annual report. The book values reported in annual reports of commercial broadcasters provide an estimate of how much a new license would sell for.

Table 4.10 below shows the total book value reported by each of the three commercial broadcaster from 2013-14 to 2016-17. The value of the license fee could also include the automatic renewal of the license by ACMA.

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<sup>58</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5907](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5907)

<sup>59</sup> <https://mumbrella.com.au/media-law-reforms-gift-quarter-billion-dollars-value-broadcast-businesses-443344>

<sup>60</sup> [https://www.communications.gov.au/sites/g/files/net301/f/factsheet\\_gambling\\_advertising.pdf](https://www.communications.gov.au/sites/g/files/net301/f/factsheet_gambling_advertising.pdf)

<sup>61</sup> <https://www.legislation.gov.au/Details/C2017C00201>

These valuations are not an ideal way of estimating the value of the prohibition on a 4<sup>th</sup> commercial broadcaster. They include the value of protection from the entry of a fourth network, the value of a broadcaster's brand and the value of the anti-siphoning scheme.

Overall, these book value provide a useful guide for understanding the value of the prohibition on a fourth television license but are likely to overstate the value to the commercial broadcasters because they capture many other aspects of the broadcasters' business. The book value of television licences are shown in Table 4.9 below.

Table 4.9: Book value of television licence (\$ million)

Broadcaster	2013-14	2014-15	2015-16	2016-17	% change
Nine	593.4	493.9	477.8	477.8	-19.5
Seven	2,300	1,371	1,371	938.3	-59.2
Ten	732.9	481.7	346.5	132.0	-82.0

Source: Broadcaster annual reports. Note: Ten Network includes only first half of FY2016-17 because of the acquisition by CBS.

It should be noted that the SBS also benefits from the prohibition of any 4th commercial broadcaster. However, the cost to SBS of the entry of another commercial broadcaster is likely to be significantly smaller than for commercial broadcasters because of the advertising restrictions and the nature of the content shown. In particular, the content shown on SBS can differ from that of commercial broadcasters due to the nature of the Charter obligations.

The entry of another broadcaster will also increase competition for content and to lead to a more diverse range of programming being offered, allowing advertisers to more precisely target particular demographics and would also, most likely, lead to the cost of advertising time falling as the quantity available increases.

The value to SBS of the prohibition is estimated here to be in proportion to the value of the advertising market they hold. This equates to around 2% of the total book value of television licences.

#### 4.3.4 Anti-siphoning legislation

The anti-siphoning scheme aims to ensure that sporting events of cultural or national significance remain freely available to all Australian audiences. It prevents STV broadcasters from acquiring the rights to sporting or cultural events placed on the anti-siphoning list before FTA broadcasters have an opportunity to purchase the rights.

Access Economics examined the economic benefits of moving to a strict 'use it or lose it' scenario for sporting events on the anti-siphoning list in 2008. The strict 'use it or lose it' scenario considered was one under which all events which are not broadcast nationally within an hour of commencing would be available to STV. A move to a strict 'use it or lose it' model was found to increase revenue for both STV broadcasters and sporting codes. The net increase in revenue was found to be \$381 million or \$462 million in 2017 dollars. While further increases in revenue may arise from removing the anti-siphoning list altogether, these are likely to be small in comparison to implementing a strict 'use it or lose it' model given that the wider audience enjoyed by FTA broadcasters means they are likely to have higher valuations of many of the premier sporting events which they currently choose to broadcast.

# Appendices Appendix 1.1 (cont)

Under the recent *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017* the government has reformed the anti-siphoning scheme. These changes to the scheme include:

- Reducing the number of events on the list to foster competition between FTA and STV broadcasters
- Allowing FTA broadcasters to televise the events through their digital channels in recognition that these channels are now widely available following the completion of digital television switchover in 2013.
- Increased the time out from an event that events are automatically removed from the anti-siphoning list from 12 to 26 weeks.<sup>62</sup>

These changes effectively move current policy settings closer to a 'use it or lose it' model. Nonetheless, the retention of the ASL still provides an advantage to commercial FTA broadcasters relative to STV by allowing them to gain rights for many sporting events without facing competition from STV (noting that for some events FTA broadcasters may still be the highest bidder).

Some of the benefit from the anti-siphoning scheme accrues to SBS, as they are able to bid for and broadcast certain events (e.g. Football World Cup) by facing less competition. Although given the restrictions on advertising minutes for SBS, they likely benefit significantly less than commercial broadcasters from the anti-siphoning list. Commercial broadcasters can generally bid more aggressively for content knowing they will receive significant sums from advertising revenue for premium sporting events. Recent changes to the anti-siphoning list have removed World Cup matches not involving Australia, other than the final and FIFA World Cup Qualifiers involving Australia, played outside of Australia.<sup>63</sup> This change weakens any advantage held by SBS relative to STV broadcasters as a result of the anti-siphoning list.

#### **4.3.5 License fee and rebates**

Until 2012-13, the Australian Communication and Media Authority (ACMA) collected broadcasting licence fees from commercial radio and television broadcasting-licence holders under the Television Licence Fees Act 1964 (TLF Act) and the Radio Licence Fees Act 1964. Fees were calculated as a percentage of the gross earnings of the licence-holders, less any rebates that apply. On 28 March 2013, the TLF Amendment Act 2013 introduced amendments to the TLF Act by permanently reducing the annual licence fee payable by a commercial television broadcasting licensee by 50 per cent, (to a maximum of 4.5 per cent of their gross earnings) and the licence fee rebate was abolished.

The Television Licence Fees Amendment Regulations 2017 removed the licence fees payable by Australian commercial broadcasters for the 2016–17 financial year. The Government has replaced the licence fees payable by commercial broadcasters with a price for the use of radiofrequency spectrum for commercial broadcasting. The government will provide some transitional support to commercial broadcasters to help with the transition to spectrum pricing and compensate them for any additional fees incurred.

Australian Communications and Media Authority (ACMA) also collects revenue through the Spectrum Licence Tax. This is a tax on commercial broadcasters to recover the indirect costs of spectrum management activities and to support the efficient use of spectrum. The spectrum licence tax is calculated based on the bandwidth and the population covered in a licence.

After removing licence fees and instituting spectrum pricing the vast majority of broadcasters will see significant reductions in fees. However, with the change to a per transmitter approach rather than revenue based charge, a small number of broadcasters in regional areas will see an increase in fees. To provide these broadcasters with time to adjust to the new fee structure, the Government will provide a transitional support package over five years. This package will fully compensate these broadcasters for any additional fees incurred

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<sup>62</sup> Amending the anti-siphoning scheme:

<https://www.communications.gov.au/documents/amending-anti-siphoning-scheme>

<sup>63</sup> [https://www.communications.gov.au/sites/g/files/net301/f/factsheet\\_anti-siphoning\\_.pdf](https://www.communications.gov.au/sites/g/files/net301/f/factsheet_anti-siphoning_.pdf)

Table 4.10 below sets out the total contribution paid by FTA broadcasters in the form of licence fees and broadcast spectrum pricing over time. From 2013-14 to 2017-18 television licence fees were \$401.9 million. From 2016-17 onward this amount was zero and was replaced in 2017-18 by directly charging for spectrum used. Lost revenue from abolishing licence fees and replacing with spectrum pricing was \$126.9 million in 2016-17. The spectrum licence tax was \$0.77 million in 2016-17. The total spectrum pricing that broadcasters will pay in 2017-18 is expected to be around \$40 million.<sup>64</sup>

Table 4.10: Licence fees and spectrum pricing (\$ million)

Support type	2013-14	2014-15	2015-16	2016-17	2017-18	% Change
Television licence fee	144.6	152.8	106.8	0	0	-100
Spectrum licence tax	0.32	0.37	0.70	0.77	n/a	55
Spectrum Pricing*	0	0	0	0	40	n/a
<b>Total</b>	<b>144.9</b>	<b>153.2</b>	<b>107.5</b>	<b>0.77</b>	<b>40</b>	<b>-72</b>

Source: ACMA Annual Reports and DCA PBS.

\* Replaced licence fees after they were abolished in 2016-17.

#### 4.3.6 Local content obligations

Deloitte Access Economics was not able to identify any information on the net cost of meeting the Australian content standard for commercial FTA broadcasters. Such an analysis would need to consider the cost of making alternative programming and the difference in revenue that alternative programming (in the absence of an Australian content standard) would generate. Data from ACMA<sup>65</sup> indicates that in 2017, at least one of the commercial FTA broadcasters appeared to not substantially exceed their quotas (some of which are based on requirements over three years) in the areas of: first release Australian drama, first release Australian documentary, first release Australian children's drama and both first release and all Australian children's and preschool programs. This suggests that these are potential areas that may not be provided to the same extent without Australian content standards (see Appendix A for further discussion on Australian content obligations).

Commercial FTA broadcasters spent \$158.3 million in Australian drama, children's programs and documentaries in 2016-17, spending a total of \$126.3 million on Australian drama.<sup>66</sup> However, some of this expenditure may be for second release programming.

One method of obtaining a high-level estimate of the additional production of costs of meeting obligations for first release adult and children's dramas and documentaries is to compare the average production cost per hour of these categories relative to a base category such as light entertainment and variety. The ABS released data on the costs per hour of the production of television programs from 2015-16 which can be used for this purpose.<sup>67</sup> The ABS data shows the average production cost of drama per hour to be \$645,700 and the average cost of producing an hour of children's drama to be \$476,100. The average cost per hour of a documentary was \$230,000 compared to \$91,900 for light entertainment and variety.

Based on the average format score for drama per hour for the commercial FTAs in drama in 2017,<sup>68</sup> to meet their Australian content obligations the commercial FTAs would need to provide 133 hours of first

<sup>64</sup> <http://mitchfield.com/Media/MediaReleases/tabid/70/articleType/ArticleView/articleId/1352/Major-reforms-to-support-Australian-broadcasters.aspx>

<sup>65</sup> ACMA, 'Compliance with Australian Content Standard and Children's Television Standard', <https://www.acma.gov.au/-/media/Community-Broadcasting-and-Safeguards/Information/pdf/Compliance-with-Australian-Content-Standard-and-Childrens-Television-Standards--2017-pdf.pdf?la=en>.

<sup>66</sup> ACMA (2018), 'Program Expenditure Information 2016-17: Aggregated data for commercial television'.

<sup>67</sup> ABS 2017, 'Film, Television and Digital Games, Australia, 2015-16', Cat. No. 8679.0.

<sup>68</sup> ACMA, 'Compliance with Australian Content Standard and Children's Television Standard', <https://www.acma.gov.au/-/media/Community-Broadcasting-and-Safeguards/Information/pdf/Compliance-with-Australian-Content-Standard-and-Childrens-Television-Standards--2017-pdf.pdf?la=en>.



## Appendices Appendix 1.1 (cont)

release drama (on average), 20 hours of first release documentaries and 25 hours of first release children's drama. If the production costs for each category among commercial FTA broadcasters were in line with the ABS figures, then the production costs associated with meeting their Australian content requirements for adult and children's drama and documentaries would be \$65 million more than the cost of producing an equivalent number of hours of light entertainment.

In reality, to properly cost the impact of Australian and local content obligations more detailed information would be needed on the underlying costs of production for each genre and the expected production costs of alternative programs that would otherwise be provided. This is still likely to underestimate the actual cost of meeting content obligations because many forms of content such as children's content are likely to be less popular and reduce advertising revenue relative to alternative programs. This point was noted in a submission by Free TV to the Convergence Review, which noted that the production costs for meeting Australian content standards set out in a submission by Screen Australia substantially underestimated the impact on advertising revenues.<sup>69</sup>

More recent Free TV submissions have noted that children's consumption of commercial FTA programming has changed over the past decade with children shifting towards viewing general family entertainment and major events from traditional children's programming.<sup>70</sup> Children also mainly watch children's TV only on-demand making Australian sub quotas less relevant.<sup>71</sup>

### 4.4 Community broadcasters

Community television (CTV) operators do not pay a licence fee to the Government to access broadcasting spectrum. CTV operators only pay a small administrative fee to the Australian Communications and Media Authority for the allocation of their transmitter licences. CTV operators are restricted to 7 minutes of sponsorship announcements per hour to be aired before or after programs or during natural program breaks.

In 2014 the government announced that it was transitioning community TV to internet only distribution. Community television was broadcast on the 'sixth channel' spectrum in the five state mainland capital cities. With the completion of the digital switchover, advances in compression standards have allowed broadcasters to use their existing spectrum much more efficiently to deliver more channels. To allow for this transition to the MPEG-4 compression technology the Government freed up the 'sixth channel' to assist in the testing and migration to this more efficient technology.

Community broadcasters were to have their licences extended until December 31 2015.<sup>72</sup> While many community TV stations have transitioned online, some have had their licence temporality extended with channels in Melbourne, Adelaide and Perth given a reprieve until 30 June 2020 when they will have to vacate terrestrial spectrum.<sup>73</sup>

The Community Broadcasting Program provides funds to assist community broadcasters, including with the delivery of community radio services. According to the DCA budget, total funding in 2017-18 is \$19.6 million. This represents a significant boost from the previous year and reverses a declining trend. This boost was directed towards the community radio sector to support digital radio services and one-off spectrum reorganisation costs for analogue radio services. \$1.9 million will be allocated in 2017-18 and \$2 million in 2018-19 to assist the community radio sector with the costs of digital radio broadcasting, including for the planned expansion of digital radio to permanent services in Hobart, Canberra, Darwin and the Gold Coast.

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<sup>69</sup> Free TV Australia (2012), 'Submission by Free TV Australia Limited to the Convergence Review – Interim Report'.

<sup>70</sup> <https://www.communications.gov.au/sites/g/files/net301/f/submissions/freetv-australia-childrens-content.pdf>

<sup>71</sup> <https://www.communications.gov.au/sites/g/files/net301/f/submissions/freetv-australia.pdf>

<sup>72</sup> <https://www.malcolmturnbull.com.au/media/the-future-of-community-tv>

<sup>73</sup> [http://www.minister.communications.gov.au/mitch\\_fifield/news/community\\_television\\_broadcasters\\_granted\\_two\\_year\\_licence\\_extension#.WxnSK2cq7Y](http://www.minister.communications.gov.au/mitch_fifield/news/community_television_broadcasters_granted_two_year_licence_extension#.WxnSK2cq7Y)



The value of regulatory support and key forms of regulatory advantages and disadvantages for community broadcasters are set out in Table 4.11 below.

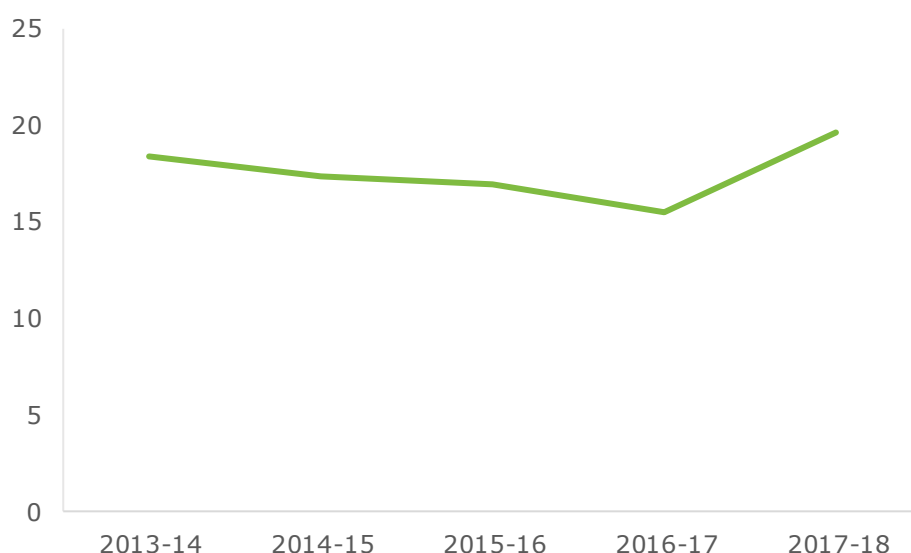
Table 4.11: Value of regulatory support/funding to community broadcasters (\$ million)

	2017-18	Change since 2013-14
Government funding	19.6	6.7%
Screen Australia funding, tax offsets	Funding accrues to multiple broadcast sectors	See Appendix

Source: Deloitte Access Economics

The total funding for community broadcasters from 2013-14 to 2017-18 was \$87.7 million as shown in Chart 4.2.<sup>74</sup>

Chart 4.2: Community Broadcasting Program (\$ million)



Source: DCA PBS.

#### 4.5 Subscription TV

Subscription television broadcasting services are licensed under Part 7 of the Broadcasting Services Act. Services provided under these licences have generally not used BSB spectrum as some subscription television services are delivered by way of satellite and others by fixed-line cables. Table 4.12 sets out current government funding for subscription TV.

Fox Sports has received funding to support television and online coverage of sports that receive low or no broadcast exposure, including women's sports and those that have high levels of community participation and involvement. This 'Supporting Underrepresented Sports' program was announced in the 2017-18 budget and will have total funding of \$30 million over four years.

<sup>74</sup>

[http://www.minister.communications.gov.au/mitch\\_fifield/news/new\\_funding\\_for\\_community\\_radio\\_broadcasters#.Wvk-OoiFNhE](http://www.minister.communications.gov.au/mitch_fifield/news/new_funding_for_community_radio_broadcasters#.Wvk-OoiFNhE)

# Appendices Appendix 1.1 (cont)

Table 4.12: Value of regulatory support/funding to Subscription Broadcasters (\$ million)

Support	2017-18	Change since 2013-14
Government funding <sup>^</sup>	7.5	No support in FY14
Screen Australia funding, tax offsets	Funding accrues to multiple broadcast sectors	See Appendix

Source: Deloitte Access Economics

<sup>^</sup> This is the funding for underrepresented sports which will equal \$30 million over the four years from 2017-18

Table 4.13 sets out a range of regulatory advantages and disadvantages applying to STV which are not explicitly valued in this report.

Table 4.13: Forms of regulatory advantage and disadvantage to Subscription TV not valued

Regulatory advantage not valued	Regulatory disadvantage not valued
Media ownership rules	Captioning requirements
Prohibition on 4 <sup>th</sup> commercial licence	Local content rules
	Anti-siphoning legislation

Source: Deloitte Access Economics

STV also received benefits from Screen Australia and state and territory screen organisation funding. While like FTA broadcasters, STV broadcasters face significant restrictions on what funding they can receive directly from Screen Australia, though they do gain indirectly through grants provided to production companies who sell their productions to STV providers. STV providers also benefit from the ability to retransmit commercial FTA channels.

There are several regulatory disadvantages to the STV sector including certain local content rules, captioning requirements and the anti-siphoning scheme. Subscription television broadcasters are subject to Australian content expenditure obligations: at least 10% of program expenditure for subscription television drama channels must be on new Australian drama.<sup>75</sup>

Anti-siphoning restricts the content they can bid on, though recent reforms have made the terms of bidding more favourable for STV broadcasters (see section 4.3.4). It should be noted that recently Fox Sports and Channel 7 won the Cricket Australia broadcast rights for six years for \$1.182 billion.<sup>76</sup> Events previously broadcast on FTA, including Men's T20, Men's ODIs and 16 Big Bash League matches will be broadcast exclusively on STV.

There is no restriction on advertising minutes for subscription television, though they are subject to a licence condition that requires subscription fees to be their main revenue source.<sup>77</sup>

<sup>75</sup> *Broadcasting Services Act 1992* (Cth) Division 2A.

<sup>76</sup> <https://www.cricket.com.au/news/cricket-australia-broadcast-deal-media-channel-seven-fox-sports-tv-guide-how-watch-bbl-television/2018-04-13>

<sup>77</sup> *Broadcasting Services Act 1992* (Cth) Cl 10(2)(b) of Sch 2 to the Act.

# Appendix A: Regulatory obligations for broadcasters

## Local and regional content rules

There are several local content obligations imposed on the commercial broadcasters. The current obligations are derived from the Broadcasting Services (Australian Content) Standard as part of the Broadcasting Services Act 1992. The object of the standard is to promote the role of commercial television services in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the communities continued access to television programs produced under Australian creative control.

Under this standard, 55% of content broadcast between 6am and midnight must be Australian programming on the primary channels of free-to-air television broadcasters. Broadcasters are also required to show an average of 4 hours per day of Australian programming in the same time on their non-primary channels. Separate sub-quotas exist for minimum annual amounts of Australian drama, documentary and children's programs as noted in Table A.1 below.<sup>78</sup>

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<sup>78</sup> See Part 9 of the *Broadcasting Services Act 1992* (Cth) and the *Broadcasting Services (Australian Content) Standard 2016* (Cth).

# Appendices Appedix 1.1 (cont)

Table A.1: Local and regional content sub quotas

Local/Regional Content Rule	Description
Adult drama sub-quota	Each broadcaster must achieve a score of at least 250 points for first-release Australian adult drama per year and a three-year score of 860 points. The score is calculated by multiplying a 'format factor' by the duration of the program. The format factor is a scale based on a combination of program type (serial or series, feature film, telemovie, mini-series or stand-alone drama of less than 90 minutes) and/or the level of license fee paid. <sup>79</sup>
Children's drama sub-quota	The Children's Television Standards 2005, which came into effect on 30 December 2005, classify children's programs as either C programs (for children other than preschoolers) or P programs (for preschool children). Drama falls within the C band.  Broadcasters are required to screen at least 96 hours of first-release Australian C drama over a three-year period and at least 25 hours per year. They must also screen at least eight hours of repeat Australian C drama per year.
Documentary sub-quota	In each year, a broadcaster must screen, between 6 am and midnight, at least 20 hours of first-release Australian documentary programs, each of at least 30 minutes' duration.
Children's programming	A broadcaster must screen a combined total of at least 260 hours of C programs (for children other than preschoolers) and at least 130 hours of P programs (for preschool children) per year from any source, with a combined total of at least 390 hours.  Children's programs must be broadcast within specific children's time periods and must meet other content and advertising requirements to meet the quotas.
Advertising	A broadcaster must ensure that Australian-produced advertisements occupy at least 80 per cent of the total advertising time screened in a year between the hours of 6 am and midnight, other than the time occupied by exempt advertisements. Exempt advertisements include those for imported cinema films, videos, recordings and live appearances by overseas entertainers and community service announcements.
Regional	Broadcasters in regional communities in Queensland, New South Wales, Victoria and Tasmania must produce 720 'points' worth of local content per six week period. Each minute of local content is worth one point; local news is worth two points. The recent media reforms will increase this requirement to 900 points, and require broadcasters in several smaller markets.  Content that may be considered of local significance may range from material that deals with people, organisations, events or issues of a particular area to a sporting event that involves a team from the area or a team whose principle support base includes that area. (Including South Australia, the Northern Territory and Western Australia) to broadcast at least 360 points of local content. <sup>80</sup>

Source: Screen Australia/Deloitte Access Economics

Conceptually, this obligation is a regulatory disadvantage that restricts the content that commercial FTA broadcasters can show. The extent of this disadvantage will depend on how binding each quota or requirement is. Commercial FTA broadcasters often exceed the quotas in some areas as some Australian content is very popular and would be shown regardless of any local content rules. SBS has supported the introduction of content quotas for its broadcasts, provided any such quotas were fully funded, in the pursuit of greater local levels of production.<sup>81</sup>

<sup>79</sup> <https://www.screenaustralia.gov.au/fact-finders/television/industry-trends/content-regulation>

<sup>80</sup> [https://www.communications.gov.au/sites/g/files/net301/f/2015-](https://www.communications.gov.au/sites/g/files/net301/f/2015-2768%2312%20Media%20reform%20FACT%20SHEET-PROTECTING%20LOCAL%20CONTENT%20WEB_SEPT2016.pdf)

[2768%2312%20Media%20reform%20FACT%20SHEET-PROTECTING%20LOCAL%20CONTENT%20WEB\\_SEPT2016.pdf](https://www.communications.gov.au/sites/g/files/net301/f/2015-2768%2312%20Media%20reform%20FACT%20SHEET-PROTECTING%20LOCAL%20CONTENT%20WEB_SEPT2016.pdf)

<sup>81</sup> <https://tvtonight.com.au/2018/02/sbs-pushes-for-local-quota-second-window-for-subscription-drama.html>

This is evident by the popularity of sports programs, with the most popular program in 2017 being the AFL Grand Final with an audience around 2.7 million (the second most popular was the Grand Final Presentations).<sup>82</sup> Of the top 50 programs in metro areas in 2017, 46 were Australian (the four foreign programs were four episodes of *The Good Doctor*).<sup>83</sup> There were no foreign titles in the top 50 programs in 2016 and 2015 and only one in 2014.

Australian content can play a vital role for commercial broadcasters in differentiating their content from global competition, in fact many commercial broadcasters would show Australian content regardless of the quotas. Commercial television broadcasters have comfortably exceeded the overall Australian content requirements in the five years to 2016.<sup>84</sup> The quota to show 55% Australian programs on their primary channel has easily been met by the commercial broadcasters with Seven (70%), Nine (70%) and Ten (62%) far surpassing the minimum requirements. In addition the requirement to show 1,460 hours of Australian programs on non-primary channels was met with Seven (3,561), Nine (1,984) and Ten (3,392) demonstrating that the quotas are not binding.

However, some local content rules e.g. those relating to children's programming and Australian drama are unlikely to be met in the absence of local content rules.

### Assistance for television production

This section sets out a range of programs which provide financial assistance to the commercial and national broadcasters to support the production of television content in Australia.

#### Tax offsets

The Producer Offset is a refundable tax rebate for producers of Australian films, television and other Australian screen content. This tax offset is administered through Screen Australia. The Producer Offset is delivered through the tax system and since all taxpayers' tax affairs are secret, Screen Australia cannot name the projects that benefitted from it.

The Producer Offset is available only to Australian films and programs. To be eligible, a project must have significant Australian content. The offset is paid through the production company's tax return after a project is completed and Screen Australia has issued the producer with a final certificate. The value of the rebate is calculated as a percentage of the project's Qualifying Australian Production Expenditure (QAPE). The rebate is:

- 40% of QAPE for feature films; and
- 20% of QAPE for other formats (for example, documentaries, TV series, telemovies or short-form animations).

Broadly speaking, QAPE is expenditure incurred on goods and services provided in Australia for making the film. In addition, the Location Offset provides a 16.5 per cent offset on qualifying Australian production expenditure (QAPE) for film and television projects filmed in Australia with an Australian spend of over \$15 million. Finally, the PDV Offset provides a 30 per cent offset on the QAPE that relates to post, digital and visual effects production for a film. QAPE as it relates to PDV production (PDV-QAPE) must meet or exceed the threshold, currently \$500,000.

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<sup>82</sup> <https://www.screenaustralia.gov.au/fact-finders/television/industry-trends/top-programs>

<sup>83</sup> <https://www.screenaustralia.gov.au/fact-finders/television/industry-trends/top-programs>

<sup>84</sup> Australian and Children's Screen Content Review August 2017 : <https://www.communications.gov.au/have-your-say/australian-and-childrens-screen-content-review>

# Appendices Appedix 1.1 (cont)

Table A.2 shows the value of the producer offset granted to TV and non-feature documentary producers. Table A.3 shows the value of the producer offset solely for TV and online drama.

Table A.2: Producer Offset for TV and non-feature documentaries (\$ million)

Support type	2013-14	2014-15	2015-16	2016-17	% Change
Producer Offset	66.1	65.9	69.9	56.8	-14

Source: Screen Australia Annual Report

Table A.3: Producer offset for TV and online drama (\$ million)

Support type	2013-14	2014-15	2015-16	2016-17	% Change
Producer Offset	43.8	37.8	45.7	52.9	21

Source: Source: Screen Australia Drama Report

Given that these offsets are rebates on tax paid, the national broadcasters are not directly eligible because they are not subject to corporate income tax. However, national broadcasters benefit indirectly by gaining access to cheaper content from commercial production companies including content that may not have been produced in the absence of the tax offsets.

## Production grants

Screen Australia also provides direct funding to produce high-quality Australian film, television, and other screen content. The following state government funding agencies provided data on titles they have funded and, in the case of state agencies, titles shot and/or post produced in their state: Create NSW, Film Victoria, South Australian Film Corporation, Screen Queensland, ScreenWest, Screen Tasmania, Screen ACT and Screen Territory.

Table A.4 below details direct government funding for drama production in Australia. This includes both federal and state government agencies and bodies.

Table A.4: TV and online drama government funding (\$ million)

Support type	2013-14	2014-15	2015-16	2016-17	% Change
Direct government funding	28.2	32.9	44.2	38.9	38

Source: Screen Australia Drama Report. Note: Includes direct funding from Australian state and federal agencies and funding bodies. Includes investments and grants only – distribution guarantees, loans and underwriting are not included. Online drama encompasses single-episode or series programs with total durations of 30 minutes or more that have premiered in Australia online. Broadly speaking they cover titles released via: SVOD (e.g. Stan), FVOD (e.g. ABC iview), AVOD (e.g. SBS On Demand and YouTube), TVOD (e.g. iTunes).

Currently, broadcasters (including commercial, subscription and FTA) are the only content producers forbidden from receiving Screen Australia funding. The Screen Australia Terms of Trade specify that an applicant for funding can't be a company providing television broadcasting services in Australia (including subscription television services) under the *Broadcasting Services Act 1992 (Cth)*.<sup>85</sup> This contrasts with online platforms (including YouTube and Netflix) which are not excluded from eligibility, as well as foreign companies including foreign owned broadcasters.

Broadcasters do derive an indirect benefit from gaining access to cheaper content and content that may not have been produced in the absence of the Screen Australia funding.

<sup>85</sup> <https://www.screenaustralia.gov.au/getmedia/2e7f34c9-1f1c-420e-a8d6-66e984ea3c92/Terms-of-trade>

### Assistance with the digital TV switchover

To assist FTA broadcasters with the switchover to digital television large amounts of government assistance were provided. While much of this support was appropriated outside the 2013-14 to 2017-18 period, some support was still provided in this window.

While the switchover to digital-only television transmission concluded in December 2013, ongoing amounts reflect funding provided for the Viewer Access Satellite Television (VAST) service. VAST provides a new digital satellite television broadcasting service for audiences who are unable to receive digital television through terrestrial facilities.

In addition to VAST, some direct government support was provided to FTA broadcasters to restack channels to allow for more efficient use of spectrum. Funding for restacking assistance ended in 2014-15. Total funding for the Digital Television Switchover Spectrum Restacking Assistance program from 2013-14 to 2017-18 was \$ 93.1 million.

Additional assistance was also provided to commercial broadcasters to assist in moving their electronic news gathering functions to alternate radiofrequency bands, to free up 2.5 gigahertz spectrum.

The Government has also provided a degree of support to broadcasters operating in regional areas with the digital switchover. The Regional Equalisation Plan (REP) rebate scheme assists the rollout of digital television broadcasting services to regional and remote Australia. The government introduced a Regional Equalisation Plan (REP) rebate scheme in 2000-01 to help the rollout of digital television broadcasting services to regional and remote Australia.

REP provides rebates against annual licence fees administered by the ACMA and, where necessary, supplementary grants administered by DCA. Rebates were claimable by broadcasters based on progress in rolling out digital television services. The scheme ended on 31 December 2017. Total assistance from 2013-14 to 2017-18 has been \$12.1 million.

Overall support for broadcasters associated with the digital switchover is provided in Table A.5 below. It should be noted that government support for the digital switchover benefited both the commercial and national broadcasters, though the split of funding between these groups is not provided in the budget papers.

Table A.5: Assistance with digital switchover

Program	2013-14	2014-15	2015-16	2016-17	2017-18	% Change
<b>Digital Switchover VAST</b>	39.9	11.7	12.1	10.9	11.1	72.2
<b>Digital Switchover Restacking</b>	46.1	47.0	0	0	0	-100
<b>Spectrum – Assistance to Broadcasters for Electronic News Gathering</b>	15.4	9.1	0	0	0	-100
<b>Spectrum Pricing Transitional Support</b>	0	0	0	0	6.2	n/a
<b>Regional Equalisation Plan</b>	9	1	1	1	0	-100

Source: DCA PBS

# Appendices Appendix 1.1 (cont)

## **Captioning requirements**

Commercial and national broadcaster television services are required to caption the programs broadcast between 6 am and midnight each day on the main channels as well as all the news and current affairs broadcast on the main channels. Programs broadcast on a multi-channel are required to be captioned if the broadcaster has previously broadcast those programs with captions on another television service.

Subscription television services are required to meet annual captioning targets. For the 2017–18 financial year (1 July 2017 to 30 June 2018), the captioning targets are between 20 per cent (for music services) to 90 per cent (for most movie services).

## **Access to spectrum**

At present FTA broadcasters are provided access to a significant amount of broadcasting spectrum as part of their broadcasting licences. In return for access to spectrum and other regulatory advantages, commercial broadcasters are required to pay a charge for spectrum use (previously they paid annual television licence fees based on their advertising revenues.)

## **Broadcast and ENG spectrum**

After the switchover to digital television FTA broadcasters have access to 210 MHz of spectrum for digital television broadcasting in the UHF BAND IV (channels 28-35) and UHF Band V (channels 36-51). UHF Band V (channels 52-69) is the 'digital dividend' spectrum reallocated for other uses.<sup>86</sup> Digital television makes use of the 174 – 230 MHz bandwidth and the 526 – 694 MHz bandwidth. This means the FTA Broadcasters have access to 30 channels<sup>87</sup> or 210 MHz of bandwidth.

The electronic news gathering (ENG) section of the spectrum is exclusively licensed and allocated to the commercial FTA broadcasters and the ABC for electronic news gathering.<sup>88</sup> The total value of ENG spectrum valued will be 220 MHz, taking into account that some of the spectrum available is shared.

## **Valuing access to spectrum**

Estimating the value of access to spectrum is a difficult exercise. A number of different factors potentially affect the value of spectrum:

- whether the spectrum is available in urban or regional areas – auction results indicate that spectrum in urban areas is generally more valuable than spectrum in regional areas;
- what part of the spectrum is being allocated – different frequencies have different propagation properties which, in turn, directly impacts the scale, scope and ultimately the cost of the broadcasting infrastructure necessary to utilise the spectrum;
- the availability of suitable amounts of paired spectrum;
- the spectrum requirements of particular devices;
- international standards and commercial availability of suitable technology which can be used on particular parts of the spectrum; and
- the profitability of services provided through that spectrum and the 'life cycle' of technology in use (for example spectrum used for technology which is in decline may be less valuable to an incumbent spectrum holder than for new entrants).

The approach taken in this report to valuing access to spectrum is based on national auction results for similar spectrum frequencies.

In April 2017 ACMA auctioned lots in the 700 MHz 'digital dividend' spectrum. Vodafone Hutchison Australia Pty Limited won with a price of \$1.25/MHz/pop that gives a value for the broadcasting spectrum approximately \$6.48 billion.

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<sup>86</sup> [https://www.acma.gov.au/-/media/Licence-Issue-and-Allocation/Publication/pdf/TVRadio\\_Handbook\\_Electronic\\_edition-pdf.pdf?la=en](https://www.acma.gov.au/-/media/Licence-Issue-and-Allocation/Publication/pdf/TVRadio_Handbook_Electronic_edition-pdf.pdf?la=en)

<sup>87</sup> Australian Communications and Media Authority (ACMA) 2011, 'Clearing the digital dividend – Planning principles for restacking digital television channels RIS', available from: <http://ris.finance.gov.au/2011/06/09/clearing-the-digital-dividend-planning-principles-for-restacking-digital-television-channels-australian-communications-and-media-authority-acma/> (26 August 2011).

<sup>88</sup> <https://www.acma.gov.au/theACMA/25-ghz-band-review>



ACMA auctioned spectrum in the 2GHz range in December 2017.<sup>89</sup> Taking the average of these auction results gives a price per MHz-population of \$0.51 and the value of spectrum at \$2.772 billion. Table A.6 gives an overview of the estimated value of broadcasting spectrum based on these results and the split between commercial and national broadcasters and Table A.7 below gives the annualised value of spectrum.

Table A.6: Valuation of broadcasting spectrum

Part of Spectrum	MHz valued	A\$ per MHz per population	Value (A\$ billion)
600 MHz range	210	1.25	6.48
2 GHz range	220	0.51	2.77
<b>Total</b>	<b>430</b>		<b>9.26</b>
Total held by Commercial Broadcasters	60% of 210 MHz of broadcasting spectrum and 75% of the ENG spectrum.		5.97
Total held by National Broadcasters	40% of 210 MHz of broadcasting spectrum and 25% of the ENG spectrum		3.29

Source: Deloitte Access Economics.

Note: Commercial FTA broadcasters are assumed to use 60% of the total broadcasting spectrum based on the fact that they use approximately 60% of total allocated channels. The commercial FTA broadcasters use three of the four allocated proportions of the electronic news gathering spectrum. Since all allocations are equal they have access to 75% of this spectrum.

Table A.7: Annualised value of spectrum

Value of spectrum (\$ billion)	Annualised value (\$ million)	Annualised value for commercial FTA broadcasters (\$ million)	Annualised value for national broadcasters (\$ million)
9.26	866.5	558.8	307.7

Source: Deloitte Access Economics

Note: The discount rate is assumed to be 7% and the value of spectrum is assumed to grow in line with inflation. The proportion of broadcasting spectrum used by commercial FTA broadcasters is assumed to 60% and the proportion of electronic news gathering spectrum used by commercial FTA broadcasters is 75%.

<sup>89</sup> <https://www.acma.gov.au/theACMA/multiband-spectrum-auction-results-winning-prices-and-winning-bidders>

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# Appendices Appedix 1.2

## Our 4-year Strategic Journey (2017-18)

<p><b>1 Build a Distinctive Network</b></p>  <ul style="list-style-type: none"> <li>Increase audience awareness of SBS's big content moments</li> <li>Invest in targeted content to maintain 25-54 television audiences</li> <li>Further amplify the suite of Flagship Events</li> <li>Successfully implement revised radio services</li> <li>Execute successful World Cup multiplatform offering</li> </ul>	<p><b>2 Digital Acceleration</b></p>  <ul style="list-style-type: none"> <li>Grow SBS ON Demand with a focus on user experience and innovation</li> <li>Accelerate investment in NACA and ALC Digital guided by growth strategies</li> <li>Invest in digital capabilities across social media, marketing and technology</li> <li>Plan and begin rolling out an organisation-wide data strategy</li> </ul>	<p><b>3 Inspire Communities</b></p>  <ul style="list-style-type: none"> <li>Engage our core multicultural audiences through innovative content</li> <li>Deliver Indigenous stories across the SBS portfolio, with NITV at its heart, in order to build engagement with all, while supporting understanding and respect for Indigenous Australians</li> <li>Enhance our engagement activities with stakeholders across audience, government, industry and community</li> </ul>	<p><b>4 Great Business</b></p>  <ul style="list-style-type: none"> <li>Pursue operational efficiencies to invest more in content</li> <li>Develop commercially savvy partnerships</li> <li>Build digital capabilities and systems</li> </ul> <p><b>5 Great People; Great Culture</b></p>  <ul style="list-style-type: none"> <li>Engage our people in exciting and challenging work</li> <li>Foster meaningful collaboration</li> <li>Develop leaders and a high performance culture</li> </ul>
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