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Creina Chapman,
Deputy Chair and Chief Executive
Australian Communications and Media Authority

Delivered by email to: CAMR@acma.gov.au.

Special Broadcasting Service (SBS) submission to the Australian Communications and Media Authority - television prominence framework implementation

Introduction

Thank you for the opportunity to submit to the Australian Communications and Media Authority's (the ACMA) industry consultation ahead of the implementation of Australia's television (TV) prominence framework.

SBS is aligned with the other free-to-air broadcasters in its strong opposition to the ACMA's preliminary views, in particular its approach to defining the primary user interface/home screen and the scope of a 'regulated television device'. These preliminary views are inconsistent with the clear purpose and language of the relevant legislative framework and risk compromising the capacity of the framework to deliver on its core objectives.

Executive Summary

- Ubiquitous access to free TV services that deliver local news, and Australian stories are the result of purposeful public policy interventions over many decades. Australians rely on these services, especially those who cannot afford to pay for subscription services.

- The fragmented global media operating environment and socio-political and economic context were at the forefront of Parliamentary consideration of prominence rules. The framework seeks to counteract the disruption of access to free, balanced, local content by global technology companies and unregulated digital content providers. Both commercial and public free-to-air broadcasting services deliver significant and intentional public policy outcomes for the Australian community, including public interest journalism, telling Australian stories, and other content that seeks to build social cohesion and combat mis and dis-information. These reforms are intended to ensure all Australians can easily access these freely available services.

- It is vital that the implementation of the prominence framework does not impede or misdirect the laws' intended operation or impact. An adaptive and robust approach to monitoring, compliance, responsiveness and assessing device and product innovations is required, to ensure requirements are adhered to as products and offerings evolve.

- SBS is concerned that the ACMA, in reaching its preliminary views, appears to have adopted policy positions which substantially diverge from the legislative intent and indulge misleading claims by TV manufacturers which were addressed throughout the legislative process. Examples include implementation lead times, the need for and complexity of hardware changes, and capacity to alter the primary user interface/home screen. SBS and other free-to-air broadcasters invested considerable

time and resources tabling evidence to refute and dispel these misleading assertions, and it is extremely concerning to see these matters re-prosecuted in an open forum with the TV manufacturers at the point of implementation.

- The primary user interface/home screen must be interpreted as the landing page or first screen visible to users when they switch on their device, without any scrolling or other user input. This is clear in both the plain, singular language used in the legislation, and in the explanatory materials that set out its purpose. Compliance with these rules may well mean that these manufacturers will need to adjust their primary user interface/home screen, to add an extra rail (row of apps), or to create and include a rail for the relevant apps if the current primary user interface does not have app tiles (for example, if the home screen is comprised just of content recommendations).

- It is not a novel or unusual outcome for a service or product to have to make changes to its visual appearance, settings or delivery framework to comply with Australian legislation. Manufacturers captured by this framework have had, and still have significant time available to them before the commencement of laws, to implement these changes, noting that Free TV Australia's (Free TV) expert advice is the changes are not complex or time consuming to make.[1]

- Similarly, SBS does not support an approach to implementation on other matters (such as the scope of regulated devices) that places too much weight on subjective factors that are open to gaming by manufacturers, for instance the way a product is described in marketing materials. Given the rapid introduction and evolution of products on the market, there must also be a flexible and timely process for new potentially 'regulated TV devices' to be identified and assessed against objective criteria for compliance.

- SBS has experienced first-hand the unscrupulous behaviour of TV manufacturers which have little interest in public service media. It is essential that implementation of the new rules occurs with a unilateral focus on the public interest of local Australian news and content, minimises lobbying by manufacturers for leniency and carefully avoids unintentionally aiding and abetting manufacturers to find system loopholes instead of focusing on being ready for their new obligations.

- Any regulatory compromises to the full implementation of the Parliament's will, as clearly set out in the relevant framework and explanatory materials, will jeopardise the core objectives of the prominence framework. Likewise, an implementation consultation process which signals to manufacturers that there is flexibility in interpretation of the laws places the implementation effectiveness at risk. .

- SBS also supports the views and recommendations detailed in the submission from Free TV, particularly its emphasis on the Government's draft regulations which signal a minimum objective of parity between local free TV apps and the most conspicuous global TV apps, including size and location, and that the ACMA's preliminary view to redefine the home screen as a "virtual space that may extend beyond the bounds of the screen"[2] would wholly defeat the objectives of the prominence framework.

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[1] https://www.freetv.com.au/wp-content/uploads/2024/02/Free-TV-submission-PA-S-Submission-2024-Final.pdf, page 4.

[2] ACMA, Implementing Australia's TV prominence framework – Call for submissions and evidence,

https://www.acma.gov.au/consultations/2024-09/our-approach-implementing-tv-prominence-rules, page 10

The criticality of the prominence framework

It is not an overstatement to describe the ever-growing dominance of global social media and technology providers as an existential threat to the availability and positive social impact of distinctive Australian news and storytelling.

This is why SBS was a strong and early vocal advocate of a legislatively enshrined digital TV prominence framework. We have worked collaboratively and constructively with the Australian Government and industry counterparts on prominence rules that:

- deliver equitable access for the many Australians who rely on free-to-air or free Broadcast Video On Demand (BVOD) services for local news and entertainment;

- fulfill taxpayer expectations that the value of public broadcasting is future proofed against ongoing growth and dominance of global media providers; and

- prevent rent-seeking TV manufacturers from acting as gatekeepers or intermediaries between Australians and freely available, public policy driven screen content.

In a precariously febrile social and economic environment of diminishing social cohesion, the importance of free access to trusted and impartial media is given increased salience as a tool to offset the growing reliance of Australians on social media news and proliferation of mis and disinformation, propped up by big-tech algorithms. The prominence framework is one critical measure in meeting this challenge as it ensures free and prominent access to SBS services, noting our remit as the nation's dedicated multicultural and First Nations broadcaster, and standing as Australia's most trusted news brand.[3]

SBS is focused on working constructively with the ACMA to ensure the new prominence framework is implemented in a way that maximises the intended public policy benefits for the community and reinforces the value of public broadcasting to Australia's diverse communities.

About SBS

SBS holds a unique place in the media landscape, inspiring all Australians to explore, respect and celebrate our diverse world and in doing so, contributes to an inclusive and cohesive society. Over almost 50 years SBS has delivered on this purpose by providing a suite of multilingual and multicultural radio, TV and more recently, digital media programs and services that inform, educate and entertain all Australians. While serving all Australians, SBS distinctly reflects Australia's Aboriginal and Torres Strait Islander peoples and cultures, and our multicultural society.

SBS is a modern, multiplatform media organisation with a free-to-air TV portfolio spanning six distinctive channels in SBS, National Indigenous Television (NITV), SBS VICELAND, SBS Food, SBS World Movies and SBS WorldWatch; an extensive radio and audio network, SBS Audio, providing over 60 communities with services in their own language; and an innovative digital video offering, centred on SBS On Demand.

SBS On Demand is Australia's most distinctive streaming platform, enabling SBS to deliver on its Charter in the digital space. With user access in seven languages and a catalogue of more

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[3] https://www.canberra.edu.au/research/faculty-research-centres/nmrc/digital-news-report-australia

than 15,000 hours of curated content in more than 60 languages from Australia and across the globe at any one time, SBS On Demand gives audiences the freedom to enjoy content on their preferred device, at their convenience, wherever they are, for free. This year, SBS On Demand achieved the highest internal customer service rating in its history, with a highly engaged audience also pushing the SBS On Demand app to the top of both the Apple iOS and Google Android app store ratings.

Rigorous editorial standards and a Code of Practice underpin the delivery of independent, accurate and balanced news, information, and current affairs and form the basis for audience trust in our services. Our connections with multicultural, multilingual and Aboriginal and Torres Strait Islander communities facilitate news and storytelling about these communities through their perspectives and voices. 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.

In the financial year ending June 2024, more Australians watched SBS than ever before, with a monthly reach of 13.2 million across linear TV and streaming, and the organisation delivered more multilingual content than ever before. Large screen devices (essentially, regulated TV devices for the purposes of the prominence framework) account for approximately 75 per cent of all SBS On Demand consumption, including connected TVs, Android TV, Apple TV, Foxtel IQ and other set top boxes.

Summary of key issues

Four key matters should be prioritised in the implementation of TV prominence rules, the intent of which is clear in the legislation and supporting statements by the Minister for Communications.

1. **Pre-installation of SBS On Demand (and other regulated television services) on the first screen a user encounters when switching on their new connected TV.** The SBS On Demand app should be pre-installed and present on the primary user interface or homepage/screen of all new connected TVs and devices included within the scope of the regulations, without the need to scroll either vertically or horizontally off the primary user interface/ homepage/screen. Of critical importance to SBS is the presence and visibility of the SBS On Demand app on the screen when the device is first utilised by the user.

2. **Agile, responsive and accountable to new innovations.** Implementation must be responsive and adaptive to the evolution of new services, platforms and operating systems for connected TVs and in-scope devices, and the ACMA role in ensuring requirements are upheld alongside new innovations clearly defined. This should involve a proactive process whereby applications can be made to the ACMA at any time for them to assess, using objective criteria, whether a potentially regulated television device meets the primary purpose test.

3. **Prominence must be protected in any changes made by manufacturers to user environments, such as a home page designed for content aggregation.** The implementation approach must be responsive and adaptive to a future scenario where the digital TV primary user interface becomes a content aggregator, so that the SBS On Demand app is given prominence (without a commercial payment required). This may

well involve a requirement to include the regulated TV service apps alongside any content aggregation recommendations on the primary user interface or homepage/ screen.

4. **Monitoring, compliance, and transparency:** A robust and transparent monitoring and compliance system should be established by the ACMA beyond implementation to ensure the news laws are delivering on their intent and manufacturers upholding their obligations. This should include a process for reviewing and monitoring how new products and services are captured, without a compliance lag, to avoid circumstances where prominence of SBS is diminished by the pace of technology and media advancements and/or through a lack of effective compliance enforcement capability.

SBS also encourages the ACMA to review and take into consideration SBS submissions to the Prominence Proposals Paper and Draft Broadcasting Services (Minimum Prominence Requirements) Regulations 2024. While these submissions were focused on achieving a legislative outcome, SBS is very concerned that the ACMA's approach is regressive on key components of prominence considered by the free-to-air sector to be resolved. It is essential the rules are implemented so that free-to-air services are not crowded-out, and that "local TV services can easily be found on connected TV devices, so that they can continue to contribute to Australia's public and cultural life."[4]

Question 1: Do you have any views on the ACMA's proposed approach?

The consultation paper, specifically *Figure 2: Indicative Implementation Timeframe*,[5] identifies activity leading up to the January 2026 implementation point for the new prominence rules but is silent on subsequent reviews post implementation.

Noting that as per *Figure 2*, some monitoring and compliance elements may be captured in Phase 4 of the ACMA implementation timeframe, it is SBS's view that either an ongoing application/assessment process or a regular cadence of review points is necessary. This will ensure the list of regulated devices is dynamic and responsive to advancements in digital TV/other connected device capabilities and support technology evolutions of SBS's (and other free-to-air) BVOD services.

Reviews should include assessing manufacturer compliance, including how manufacturers are adapting to BVOD service evolutions to retain minimum prominence and include measures to enable the ACMA to effectively address non-compliance where necessary. Assurances that the monitoring process is rigorous can also aid in motivating manufacturers to comply with the rules. To that end, a monitoring and compliance report issued by the ACMA in a relevant and timely manner (i.e. annually) would add to the raft of measures encouraging manufacturer accountability and provide assurances that the intent of the legislation is being borne out by the implementation.

The consultation timeframe must also reflect the critical importance of the prominence framework and allow time for SBS and other industry participants to meaningfully contribute to key implementation points. In this context and noting specifically the indicative timeframes

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[4] Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA), *Prominence for Connected Television Devices–Proposal Paper*, DITRDCA website, 2022, accessed 18 October 2024, page 12
[5] https://www.acma.gov.au/consultations/2024-09/our-approach-implementing-tv-prominence-rules

outlined in Phase 2,[6] the ACMA should avoid a scenario where broadcasters are being asked to provide input on the drafting of initial guidelines and/or instruments to determine regulated TV devices and/or instruments for primary user interface and/or 'offered' over the end-of-year holiday period. SBS has a mandatory shut-down period from 20 December to 6 January. Not only would it be sub-optimal for the ACMA to open consultation just prior to Christmas, SBS would lack adequate access to its core technical advisers.

More generally, we support Free TV's analysis that the implementation phasing should focus on ensuring an enforcement framework is ready and available in advance of the commencement timeframe and be independent of any forthcoming changes or clarifications of any current definitions in the laws. That said, SBS would expect that the ACMA would provide an opportunity for SBS to provide further feedback in the event of any changes or clarifications to the draft regulations.

Question 2: What are your views on the proposed considerations when applying the primary purpose test? Is there anything else the ACMA should consider?

The ACMA's preliminary views on applying the primary purpose test should be adjusted to place more weight on objective criteria and avoid an over-reliance on subjective criteria that can be gamed by manufacturers to avoid being captured by the regulatory framework (for example, the way in which the product is described by the manufacturer). This section also gives rise to questions about how and when new devices coming on to the market will be assessed under the primary purpose test.

Section 130ZZL of the legislation provides that, for the purpose of the prominence rules, the 'primary user interface' of a regulated television device means the interface of the device that:

 (a) is either or both of the following:

 (i) the home screen or main screen of the device;

 (ii) the main interface most commonly used to provide <u>access</u> to applications that make audiovisual content available on demand using a listed <u>carriage service</u>; and

 (b) meets the description or requirements (if any) determined by the ACMA under <u>subsection</u> (3).

This reflects SBS's supported definition of a primary user interface that:

> **The SBS On Demand app (and the apps of other FTA broadcasters) are present and visible at start up on the primary user interface, without the user having to scroll through pages, rails or subsections of the primary user interface.**

<u>Edge cases such as Smart Monitors</u>

In relation to the discussion on specific devices in Section 2 of the ACMA paper, SBS disagrees with the exclusion of Smart Monitors. Given the ACMA has already acknowledged that Smart Monitors and Smart Projectors are "edge" case devices requiring case-by-case assessment. SBS seeks more information about the evidence the ACMA is relying on to form its view for Smart Projectors being considered likely in-scope, but Smart Monitors are likely out-of-scope. As already noted, manufacturer descriptions of features and functions should only be one consideration contributing to a litmus test for device inclusion. Tracking devices and how their

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[6] Ibid

primary purpose evolves, as distinct from and in addition to applications built on operating systems, is an important factor in honouring the intent of the new rules in the future.

Table 1 below describes the device types which SBS considers should be in and out-of-scope at implementation, noting there will be changes to the primary purpose of a particular device or new devices coming into the market for consideration. For example, if Google TV is integrated onto a Smart Monitor its primary use would infer inclusion based on current criteria.

Table 1:   Summary of device types

In-scope	Likely in-scope	Likely out-of-scope	Out-of-scope
• Smart TVs • Smart streaming devices • Smart Monitors • Smart Projectors			• Mobile phones • Tablets • Laptop and desktop computers • Video game consoles

Noting that the ACMA has acknowledged that some devices are designed to meet multiple purposes, the application of the primary purpose test should be focused on objective functionality elements like the design of the user experience for the device, types of software and apps preinstalled and promoted and other features and functions. SBS is eager to understand how the ACMA foresees assessing whether devices ruled in or out-of-scope (according to the matters defined) would be monitored for changes over time. It is essential that the regulatory approach avoids future unintended impacts of devices evolving in how they meet the ACMA preconditions for inclusion.

SBS seeks more information specifically regarding:

- How are devices to be assessed as in or out-of-scope and by whom?

- Are the criteria sufficiently objective to ensure that they cannot be gamed to avoid capture by the regulatory framework?

- Is it up to audience members or broadcasters to nominate devices as they are introduced to the market or will the ACMA establish a function with this responsibility?

- How is the device list monitored and adapted for changes to the primary purpose? I.e., will there be a process to check or reaffirm that the primary purpose of a particular device hasn't changed or evolved since the establishment of the in-scope list?

Question 3: Is there a device the ACMA has not mentioned in this paper that you think should be considered?

The ACMA consultation paper does not make mention of Foxtel IQ as distinct from Hubbl, or the new Google TV Streamer as distinct from Chromecast. Considering the ACMA's interpretation of its role in determining the device list and application of a set of pre-conditions,

SBS is eager to understand in more detail its plans for monitoring and reviewing devices in-scope. Specifically, how does the ACMA intend to assess new devices which may need to be considered in-scope over time and what role will the broadcasters and the ACMA have.

Question 4: Do you consider there is a need for the ACMA to clarify whether certain specific domestic reception equipment is, or is not, a regulated television device?

In its submissions to Government, SBS noted that the definition of 'regulated television device' in the legislation drafting referred to 'domestic' reception equipment. SBS queried whether the definition was broad enough to encompass reception equipment used in non-domestic settings, such as in hotels, hospitals, and venues.

We bring this to the ACMA's attention with a view that such settings be considered as a domestic setting so as to ensure viewers in hotels, hospitals and other relevant venues are not restricted by the application of the prominence rules from easy access to SBS on a regulated TV device otherwise considered in-scope on the device list in a domestic home setting.

Question 5: Should the ACMA exercise its discretion to make descriptions or requirements for a device's primary user interface? Should the descriptions or requirements refer to the primary user interface extending beyond the static landing page for access to VOD apps, to include scrolling (horizontally or vertically)? Do ribbon or row layouts require different consideration to grid layouts?

Defining the primary user interface

It is SBS's very firm position that the intent of the new prominence rules has always been to provide free Australian BVOD services with prominence on the first screen a user is presented with on their connected TV device (noting that every user has flexibility in changing and adapting settings after the point of purchase/installation/first connection).

SBS's objective of prominence on the primary user interface remains that[7]:

> *The outcome for users must be that the SBS On Demand app (and the apps of other FTA broadcasters) are present and visible at start up on the primary user interface, without the user having to scroll through pages, rails or subsections of the primary user interface.*

As such, the SBS On Demand app should be pre-installed and present on the primary user interface or homepage/screen of all new digitally connected TVs and devices included within the scope of the regulations, without the need to scroll either vertically or horizontally off the primary user interface or initially visible home page/screen. It is essential to SBS that the SBS On Demand app is present and visible on the screen when a user first uses the device.

The intent of establishing prominence rules is that SBS (and other free-to-air broadcasters) should be no less favourably treated in terms of access, prominence and placement on regulated connected TV devices than other international streamers. This intention has been reaffirmed by the Minister for Communications on multiple occasions:

"That's why our prominence reforms help ensure free local services remain easily accessible to Australian audiences on their connected television devices, even as technology changes."[8]

And:

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[7] SBS Supplementary submission to Senate Committee, page 2.
[8] https://minister.infrastructure.gov.au/rowland/media-release/exposure-draft-prominence-regulations-released

*"These reforms improve access to free-to-air television services on new connected television devices by ensuring local services **aren't crowded out by global streamers.**"[9]*

Factors being considered in determining the primary user interface

There is substantive evidence[10] that the software configurations to achieve a new layout are far from insurmountable for TV manufacturers and they have been provided with ample lead time to effect the changes required to support Australia's new laws. Unwarranted lenience risks empowering manufacturers in delivery of the framework.

The fact that there might not be room on a current primary user interface/home screen for the additional regulated TV services apps now is also an irrelevant consideration. Organisations must frequently change their behaviours, products or services to comply with regulatory frameworks. In this case, the home screen or primary user interface must be adjusted to accommodate the regulated TV services.

As already mentioned, SBS will only consider the intent of the legislation as having been upheld if a user can turn on their new connected TV device and discover SBS On Demand (as well as Live TV viewing) pre-loaded and visible on the first page of interaction. As per the Free TV submission any definition of the primary user interface which includes extending beyond the bounds of the first screen to show all regulated TV service apps would be considered by SBS to be a failure of the prominence framework to achieve its core purpose.

Question 6: Do you support treating content aggregating interfaces differently from other regulated television devices when describing requirements for the primary user interface?

For the prominence framework to be successfully implemented, recognition that prominence is required for free apps such as SBS On Demand and free local content is critical. SBS is very concerned that too much leniency is being exercised in the interests of manufacturers and specifically, the ACMA suggestion that there will be circumstances where the capacity for manufacturers to achieve prominence for the regulated TV apps is not possible, is a major regression of the core legislative expectation.

There is no rationale for approaching this framework differently to other regulatory frameworks that have been introduced. If a content aggregation home screen layout means it is not currently possible for a manufacturer to comply with the law, then it must make adaptations to that home screen, noting also the generous lead time afforded to manufacturers to implement a technically simple change. SBS's position is that adding a rail or row to comply is the most sensible way forward under this scenario to ensure minimum prominence compliance. We support Free TV's position that as the regulator the ACMA has the opportunity to preclude primary user interfaces which are inconsistent with the prominence framework by ensuring that a rail or row of apps with the free-to-air broadcasters BVOD services is present.

We also note the laws have the scope for regulation of content aggregation and regulation of search function, however the consultation paper does not mention or explore matters regarding searchability. SBS would be eager for clarity on whether a requirement for content to be searchable and discoverable via the manufacturer's interface will be captured by the regulations when they come into effect and the ACMA's compliance role in this regard.

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[9] https://minister.infrastructure.gov.au/rowland/media-release/new-laws-enhance-media-access-all-australians
[10] https://www.freetv.com.au/wp-content/uploads/2024/02/Free-TV-submission-PA-S-Submission-2024-Final.pdf.

Question 7: To what extent do existing contractual arrangements between device manufacturers (or operating systems) and content services providers (such as SVOD providers) affect the ability to provide prominence to BVOD apps on the primary user interface?

SBS notes that TV manufacturers have been given a very generous lead time for implementation, much longer than Free TV's expert suggested was necessary.[11]

There are examples in the broader economy where changes to products and business processes are required to comply with incoming regulatory requirements, and it is reasonable to expect the same to occur with prominence.

As stated in the Explanatory Memorandum the prominence framework is not intended to displace or preclude existing commercial arrangements. Subsection 130ZZN(3) relates "only to fees, charges or any other consideration in relation to compliance with the regulations"[12] and would not prohibit arrangements beyond the prominence requirements under which regulated TV service providers pay a fee, charge or any other consideration for particular display or visibility (for example, having a particular regulated TV service's content appear first in search results or in content recommendations). That is, the focus of the regulation is to achieve equal prominence, not upend an arrangement that a service provider has to be first.

Call for evidence 1

According to submissions to earlier government processes, 5 brands (Samsung, LG, Sony, Hisense, TCL) account for around 86% of the market for smart TVs in Australia. We are establishing a catalogue of images of 'home screens' and 'main interface(s) most commonly used to provide access to applications' from manufacturers of regulated television devices in Australia. This catalogue will assist with finalising our views on describing the primary user interface.

We request stakeholders provide images of home screens (where BVOD and SVOD apps are commonly located). This includes the home screens of all brands of TVs, streaming devices and other likely regulated television devices available in Australia.

There are a broad range of different operating systems on different connected TV models, even where these are established by the same manufacturer. A random selection of home screens is an ineffective way to understand the breadth of available home screen configurations or to inform principles of the implementation approach such as defining the primary user interface.

Question 8: Should the ACMA determine circumstances in which a regulated television service is, or is not, taken to be 'offered'? Is the ordinary meaning of 'offered' adequate?

It is SBS's view that the existing processes under which the industry pursues offers with manufacturers and produces apps aligned to their technical requirement is working effectively and no intervention is required at this time. SBS has in-house functions and capabilities well

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11 Ibid

12 https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/9655992/upload_binary/9655992.pdf, page 10

established and refined over the past decade to pursue offers with manufacturers. The process established for building apps and submitting those apps for certification has also been embedded for several years - the problem has been motivating manufacturers to give that app prominence without a commercial payment. As such we support Free TV in that where possible the ACMA should rely on existing industry practices for determining the circumstances in which a regulated television service is taken to be offered.

It may be necessary for the ACMA to be involved in the future if issues arise; i.e. if there are changes to manufacturer behaviour that appear to undermine the prominence framework's purpose (for example, unreasonable changes to timing or quality requirements).

Noting that the ACMA is considering its need for a legislative instrument to determine when a regulated TV service is taken to be 'offered,' definitions of timelines should include setting parameters for manufacturer transparency to avoid manufacturers deploying their own development timelines as a system loophole to effectively block the capacity of Australia's free-to-air service providers from achieving prominence.

SBS seeks further information from the ACMA about how and by whom such a list for minimum specification for apps would be established and maintained for currency and the role of the free-to-air TV service providers in this regard.

Question 9: Is there sufficient transparency about which apps are currently offered to which manufacturers?

SBS has well established systems and commercial procedures to navigate manufacturer offer. This should be left to a market approach and to the individual broadcasters, given their intimate understanding of their own products and services.

SBS has previously highlighted examples in which threats have been made to remove SBS On Demand from particular TVs by TV manufacturers if SBS did not agree to providing an SBS On Demand revenue contribution to that manufacturer. This is the very definition of rent-seeking behaviour as TV manufacturers have nothing to do with investing in the production of content that is offered on their devices. TVs are nothing but black empty boxes without the content produced by services like SBS to offer to TV product consumers.

It is as such SBS's expectation that regulations will improve transparency about which apps are offered to manufacturers by equalising the approach across the domestic sector.

Question 10: What circumstances should the ACMA consider for a regulated television service to be, or not be, taken to be 'offered'?

Question 11: Under what circumstances might a manufacturer 'reject' an app that meets its quality and timeliness criteria?

Question 12: Are there different circumstances that the ACMA needs to consider for different kinds of regulated television services?

These are matters for the ACMA, but it is SBS's view that these are not areas where the ACMA should actively seek to be involved as part of performing its implementation role. As an example, the certification process for apps is mature and in SBS's case, delivered effectively by an in-house team. So long as evidence does not emerge of TV manufacturers misusing power to attempt to freeze out apps, SBS does not envisage a broader set of circumstances warranting the ACMA's consideration.

Call for evidence 2

What platforms and operating systems are regulated television services available on?

SBS On Demand is available on the following;

Web browsers:

Google Chrome 119 and above

Firefox 115 and above

Safari 15 and above

Microsoft Edge 120

Chromecast support available for Google Chrome, Firefox, Safari and Microsoft Edge.

Mobile devices

Android 8.0 and above

iOS 15 and above

Chromecast

Chromecast 2nd Gen

Chromecast Ultra

Chromecast 3rd Gen

Chromecast with Google TV

Android TV

Android 9* & above
Sony, Kogan, TCL, Toshiba, Phillips

*Subject to device operating system

Apple TV

4th Generation + later

Hisense TV

2017 models and later

Samsung TV

2017 models and later

LG TVs

2017 models and later

HbbTV enabled TVs & Devices

FreeviewPlus certified TVs and devices only (see here)

Set-top boxes

Fetch

Apple TV 4th Gen +

Foxtel iQ3, iQ4 and iQ5

Android*

Hubbl Devices

Firestick TV

Basic & Lite Editions

Fire OS 5

Call for evidence 3

How do app developers provide assurance of an app's compatibility with each device or operating system? For example, is there internal or external certification of apps?

To ensure compatibility with different operating systems, SBS has internal and external quality assurance teams which test each build before submitting it to a third-party platform and in most instances, it is reviewed by third-party platforms before published to audiences:

- For Google and Apple platforms, SBS submit builds to their play stores and these builds need to be approved before being published and this typically takes around 24 hours.

- For connected TV platforms, SBS can update the app without the manufacturer approving it in most instances. There are some circumstances

where SBS is required to submit builds for review and in this process the manufacturer will need to approve the build before it is published which can take from a few days to a couple of weeks

- There is no certification/approval process for the web and SBS has an internal team that validate the builds before publishing them live.

Call for evidence 4

What lead times are required to incorporate additional regulated television service applications into a device if they are compatible and made available today? For a given model of device, what do manufacturers consider the deadline for an app to be pre-installed, or added to a setup procedure?

The lead time from an app perspective varies but it doesn't take SBS long at all and our teams are accustomed to making similar changes all the time in a matter of weeks.

Call for evidence 5

Data on the likely costs of compliance would help the ACMA evaluate the efficiency of the regulatory framework. What costs do regulated television service providers incur when offering apps to manufacturers? What costs do manufacturers incur when assessing or accepting apps submitted to their app store? Noting this is commercially sensitive information, indicative figures are acceptable.

The associated cost with supporting an application on a specific platform depends on what is being considered, i.e. the costs vary if there is a requirement to build an app compared to maintaining apps on connected TVs and there are also associated costs in hosting an app and content development costs for streaming. It is not commercially appropriate for SBS to provide details on the order of these costs.

Conclusion

In line with the Parliament's intent, implementation of the new prominence framework should place a premium on facilitating the ease and capacity of audiences to seek out trustworthy news and information through robust regulation of connected TV devices and with a rigid focus on readying TV manufacturers to adhere to their new obligations. It is critical the implementation approach keeps in frame that at its core, the intention of the prominence framework is to drive greater access to free media for the benefit of all Australians.