

Inquiry into the Competitive Neutrality of The National Broadcasters



June 2018

The Media, Entertainment & Arts Alliance (MEAA) is the largest and most established union and industry advocate for Australia's creative professionals. Its membership includes journalists, artists, photographers, performers, producers, ballet dancers, symphony orchestra members and musicians, venue and event workers, sportspersons and officials, together with film, television and performing arts technicians. We have a diverse and vibrant membership across all spheres of creative endeavour in Australia.

MEAA note that this Inquiry is being conducted in an environment of overt hostility towards the ABC and to a lesser extent, SBS. In our view, this is an inquiry in search of an ill-articulated (or non-existent) problem.

This Inquiry follows the ABC and SBS Efficiency Study of 2014, approximately \$380 million in funding cuts to the ABC and \$20 million for SBS since 2014 and is taking place in conjunction with a further ABC efficiency review announced by the Government in May 2018. MEAA also expect the ABC Fair and Balanced and ABC Transparency bills will make their way through the Australian parliament in the second half of 2018.

We further note that this Inquiry is occurring before two other inquiries have reported their findings: Treasury's Review of the Commonwealth Government's Competitive Neutrality Policy, which commenced in 2017; and the ACCC's Inquiry into Digital Platforms.

It strikes us as premature that this Inquiry should proceed while the foundations of competitive neutrality policy are being reviewed and before the main threats to the Australian media sector's plurality, if not survival - digital platforms such as Facebook and Google and unregulated content providers including *Netflix*, *Amazon* and *Stan* - has properly been assessed.

Finally, we note the existence of the Productivity Commission's Competitive Neutrality Complaints Office (AGCNCO). This office is charged with fielding complaints and launching investigations into whether public entities have adhered to the Competition Principles Agreement. The by-passing of this office in favour of this inquiry is puzzling and concerning.

Treasury's March 2017 consultation paper for its review into competitive neutrality policy stated that the AGCNCO 'investigated 15 complaints since 1999'¹, including one concerning ABC Productions.² This same paper revealed that two competitive neutrality complaints had been investigated in the past ten years, the most recent being in 2012.³

We nonetheless welcome the principles the Inquiry Panel has elected to observe in conducting this review. To paraphrase, these are:

- Public interest is the primary focus;
- Competition serves the public interest ... but does not encompass the whole public interest;
- Competitive neutrality is a necessary part of competition policy;
- Successive governments have decided that public funding of national broadcasters is in the public interest;
- Transparency of government entities is needed for accountability and confidence; and
- As far as possible, policies and regulations should be implemented in ways that do not inhibit adaptation to changing markets and technologies.⁴

¹ *Review of the Commonwealth Government's Competitive Neutrality Policy, Consultation Paper*, March 2017, p. 14

² The AGCNCO investigated a single complaint in 1999 concerning ABC Production Facilities. The office found that 'the method of costing used by ABC Productions identified and allocated all relevant costs, and the pricing of its services was consistent with competitive neutrality policy. See *Review of the Commonwealth Government's Competitive Neutrality Policy, Consultation Paper*, March 2017, p. 29

³ *Ibid.*, page 26

⁴ *Inquiry into the competitive neutrality of the national broadcasters, Issues Paper*, Department of Communications and the Arts, p.p. 12 – 13

Competitive Neutrality

The *Competition Principles Agreement* from 1995, as amended in April 2007, states that:

'The objective of competitive neutrality 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 the non-business, non-profit activities of these entities'.⁵

In effect, this Inquiry is charged with finding a 'business activity' carried out by a national broadcaster with no regard to the principles of cost efficiency or full-cost attribution. Although some commentators would readily assert that this kind of conduct is commonplace within our public broadcasters, we are confident that the opposite is true.

Nor is MEAA aware of any aspect of the commercial media sector's activities being displaced as a result of the operations of the ABC or SBS. We note here that competitive neutrality principles do not prevent participation and competition in markets where private interests provide services. Neither the ABC nor SBS should be apologetic for providing service to the Australian community.

Public corporations experience levels of scrutiny, disclosure and funding uncertainty that compel cautious operations. These pressures often result in restructuring of services, program abandonment or realignment and of course, substantial job losses. In this regard, it is difficult to conceive that the national broadcasters managing such turbulence would do anything other than operate efficiently and in accordance with their charters.

It was only two months ago that the ABC gave evidence to a Senate Estimates Committee that 1,012 jobs had been cut since 2014. The Senate also heard that:

'Thirty years ago, the ABC had five platforms and 6,000 employees. Today, by contrast, we have six times the platforms but just two-thirds the staff and half the funding per capita'.⁶

It is a matter of record that the ABC is Australia's single largest cultural creative employer. Its 2018 efficiency paper reported that it produces 8,860 hours of first-run Australian content and an equally unsurpassed 342 hours of first-run children's programming each year.⁷

Screen Australia's 2017 *Drama Report* also noted that the Australian film and television industry provided the majority of finance for TV and online drama in 2016-17, at \$252.9 million for 77 titles. 'The largest contribution from a single broadcaster came from the ABC, which provided finance to 34 titles – nine of which were iView originals'.⁸

Although they provide a wealth of community service obligations that no commercial broadcaster would consider providing due to the manifest inability to recover production costs, they cannot and should never be portrayed as market failure service providers.

⁵ Competition Principles Agreement – 11 April 1995 (as amended to 13 April 2007), Clause 3.1

⁶ *ABC has shed 1,012 jobs since 2014, Senate estimates told*, Amanda Meade, The Guardian, 24 May 2018

⁷ Yours, Now and Into the Future, Efficiency Paper 2018, ABC, page 11

⁸ *The Drama Report 2016-17*, Screen Australia, p. 17

It has been fundamental to the national broadcasters' sustainability that they embraced digital media and multi-platform operations. They prudently and correctly anticipated the rapid uptake of digital media by the industry and consumers. This does not equate to acting improperly or in a manner designed to cause hardship to competitors.

The ABC's expansion into new media areas is also consistent with the initiatives of most other public broadcasters in the world.

It is hardly the case that commercial television and radio have stood still while the digital media economy has grown. The Seven Network now has four stations and dominates the Western Australian media; Nine has four; and Ten has three. Nine is also a commercial partner with Fairfax Media in the *Stan* streaming service. All commercial broadcasters have an established online presence for catch-up, broadcasting and in most cases, for news media.

Ratings for commercial television have also been consistently superior to national broadcasters over the course of the digital revolution. The ABC has spanned 11 to 14% audience share over the last decade; SBS between 4 and 6%. Seven and Nine have tracked at about 22 to 25%, with Ten recording between 15 and 17%.⁹

The free-to-air television advertising market was valued at \$3.8 billion by pwc in 2015 and \$3.7 billion in 2016. Pwc estimates this figure will fall to about \$3.45 billion in 2018.¹⁰ These figures indicate a downturn, not a calamity. The commercial radio advertising market is expected to grow by about 2% per year according to pwc, growing from \$1.24 billion in 2015 to \$1.347 billion in 2018.¹¹

Commercial broadcasters have also received approximately \$1 billion in spectrum licence fee relief since 2010 as a result of successive governments reducing these fees.¹²

It is true that SBS relies on advertising revenues for about one-third of its total funding, but the \$100 million SBS currently collects in ad revenues is a relatively small component of overall television advertising income, a fact attested to by the Prime Minister when he was the Minister for Communications.¹³

Regulation

MEAA concur with the statement in the *Issues Paper* that, 'All television and radio services were and are heavily regulated either through the Broadcasting Services Act or the ABC and SBS Acts'.¹⁴

We are satisfied that the current compliance and reporting requirements for both national broadcasters are adequate, with the exception that we would like to see express and detailed reporting on how much Australian content these broadcasters produce each year.

⁹ Across primary and multi-channels

¹⁰ See pwc's Outlook: Australian Entertainment and Media 2017-2021, Free-to-air television chapter

¹¹ See pwc's Outlook: Australian Entertainment and Media 2017-2021, Radio Chapter

¹² The \$1 billion estimate is based on 2010 licence fee levels

¹³ When seeking parliamentary approval to increase in SBS's advertising airtime to 120 minutes per day in 2015, Mr Turnbull observed that 'the additional advertising revenue received by SBS [was] highly unlikely to have a material impact on the advertising revenue of the commercial broadcasting industry'. See: *Facts about SBS Advertising*, Hon Malcolm Turnbull MP, 24 March 2015

¹⁴ Inquiry into the competitive neutrality of the national broadcasters, Issues Paper, 26 April 2018, page 5

With respect to the ABC, its functions include, 'to provide within Australia innovative and comprehensive broadcasting services of a high standard ...' and 'to provide digital media services'.¹⁵

The charter obliges the ABC to take account of 'the broadcasting services provided by the commercial and community sectors of the Australian broadcasting system ...' and honour its 'responsibility ... as the provider of an independent national broadcasting service'. We are aware of no evidence that the ABC has not taken these aspects of its charter seriously.

SBS's principal function is to provide 'multilingual and multicultural radio, television and digital media services'¹⁶. In performing its principal function, SBS must, 'as far as practicable, inform, educate and entertain Australians in their preferred languages; contribute to the overall diversity of Australian television and radio services; and '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... SBS must also 'contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities.

Both charters explicitly require the national broadcasters to provide services that commercial broadcasters do not. The ABC is explicitly also charged with the responsibility to be 'independent' and to contribute to the Australian sense of identity.

Both charters also require that the organisations make use of digital media services. It is inherent in the charters that the broadcasters use their best endeavours in delivering communications services.

Beyond charter obligations, the public broadcasters are routinely summoned to provide Estimates evidence, where they account for public expenditure.

Conclusion

MEAA support full public accountability for public broadcasters. Their statutory origins form the basis upon which Australians can trust and test that the monies they receive and the ventures they participate in – are in furtherance of their public missions.

The ABC and SBS have made admirable headway in the first decade of the digital media era. It now appears that this is a source of unrest for commercial broadcasters, who are looking to preserve income streams, especially advertising income.

As we pointed out earlier, the national broadcasters are not to blame for diminishing advertising returns. The ABC receives no advertising revenue and SBS's share is relatively modest.

Our public broadcasters are efficient and they are dedicated to meeting audience expectations and demands, including making quality content available on a variety of platforms.

It would be absurd if the national broadcasters were constrained from making use of the technological tools that encourage public access to their platforms. There is simply no public utility in doing so. It would impair the value and purpose of these enterprises' delivery of excellent news and entertainment.

¹⁵ See section 6 of the ABC Act

¹⁶ See section 6(1) of the SBS Act

With all due respect to the panel members on this inquiry, MEAA believe that competitive neutrality principles, which have largely fallen into disuse in the past ten years, are a virtual Trojan horse through which the Government can mount further attacks on the ABC and its employees.

Meanwhile, the progressive failure by government to modernise broadcasting regulation to suit the digital era continues. For as long as this situation prevails, all producers of content in Australia will be fighting with one hand tied behind their back, revenues will continue to fall and the alarming trend of job losses will continue.