

**SBS SUBMISSION TO
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
DIGITAL PLATFORM SERVICES INQUIRY – MARCH 2021
REPORT ON APP MARKETPLACES – ISSUES PAPER
October 2020**

Key Points

- SBS is a participant in app marketplaces, principally as an app provider, in delivering its digital media services
- SBS apps are free for Australian audiences' use. As a hybrid-funded public broadcaster SBS content services include advertising. However, SBS apps do not have in-app purchasing functions
- The Inquiry should take a broad view of app marketplaces for investigation, including apps that are available for use on connected televisions (**CTVs**)
- There is a significant power imbalance between major app marketplaces such as Google and Apple, and app providers such as SBS. This is particularly so given the links between the Android and iOS operating systems and manufacturers of some CTVs and mobile handsets, as these apps and devices interoperate
- With regard to the ACCC's separate process on the News media bargaining code, and this ACCC inquiry on app marketplaces, where issues are common to the two sectors or policy-development processes, or are analogous, it would be appropriate for the ACCC to treat them consistently in its response
- Some of the key issues to be addressed include additional requirements on app providers arising from changes made by app marketplaces, often without sufficient consultation or notice; and a lack of transparency in the way display and prominence of an app is determined by marketplace providers



I. Introduction

The Special Broadcasting Service Corporation (**SBS**) welcomes the opportunity to comment on the ACCC's *Digital Platform Services Inquiry's* (the **Inquiry**) *March 2021 Report on App Marketplaces – Issues Paper* (the **Issues Paper**). SBS recognises that the Inquiry follows findings of the initial ACCC's *Digital Platforms Inquiry*, which delivered its final report in July 2019.¹

SBS is unique in the Australian media environment, with a principal function of providing multilingual, multicultural and Indigenous radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.²

SBS reaches almost 100 per cent of the population through its five free to air television channels (SBS, SBS VICELAND, SBS World Movies, SBS FOOD and National Indigenous Television (**NITV**)) and seven radio stations broadcasting in 63 languages other than English (with audio content also available via the SBS Radio App). SBS On Demand, SBS's video-on-demand service, provides approximately 9,000 hours of exclusive and distinctive content across key genres such as drama, film and documentary, including SBS commissioned content—a vast collection of which are stories otherwise untold by other media.

II. SBS in app marketplaces

SBS participates in software application (**app**) marketplaces—as an entity that provides a range of its digital media services via a collection of seven apps (an **app provider**).

All of SBS's apps are free to download and use. SBS apps do not have in-app purchasing functions—all content and functionalities within SBS apps are available to users free of charge. As with SBS broadcast services, in-app advertising delivers important revenue to SBS to assist in the production of distinctive Australian multicultural and multilingual content.

This is consistent with our status as a public broadcaster, operating on the premise that all Australians should be able to access our services, and without additional charges. As a service principally funded by the Australian taxpayer, with a clear public policy remit, it is essential that all Australians are able to access SBS services on the platform of their choice.

SBS acknowledges that over the past few years, there have been a number of positive changes—including the increased availability of marketplace tools which assist development and promotion of SBS apps within these marketplaces.

Participation in the app marketplaces provided by Apple, Google as well as Samsung, LG, Sony and others is critical to the ongoing distribution of SBS digital media services to all Australians. Therefore, the marketplaces' terms, procedures and practices have a significant and growing impact on SBS's services and access to those services by audiences, and the terms on which the marketplaces operate are evolving in a range of ways.

¹ <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>

² SBS Charter.



By way of example, approximately 80% of SBS On Demand app users have discovered and downloaded our app from one of these marketplaces.³

III. The Inquiry should take a broad view of app marketplaces for investigation

In addition to assessing Google and Apple's marketplaces, the Inquiry should specifically address the role, dominance and impact on Australian media businesses and other app publishers of the conduct of connected television (**CTV**) manufacturers. This should also be extended to providers of other digital platforms and connected devices whose own operating systems and app marketplaces are relied on by audiences for the download and use of SBS apps (such as gaming console and smart speaker providers).

As noted in SBS's recently-published *Corporate Plan 2020–21*, Smart TVs, connected gaming consoles and portable devices have changed the way Australians are consuming media, driving increasing non-linear consumption such as gaming, on-demand video, internet browsing and music streaming.⁴

Recently, SBS on Demand has experienced significant growth, including increased content consumption via CTVs. The platform has over eight million registered users with 32 per cent of usage coming from CTVs alone.⁵ This represents over 18 per cent year on year growth. This trend demonstrates that CTVs are a primary, and growing, platform for content consumption in Australia.

The Australian Communications and Media Authority (**ACMA**) predicts that in 3 years, the average Australian household will have 18 devices connected to the internet.⁶ This prediction underpins the need for this Inquiry to consider a broad range of connected platforms.

The Inquiry should assess the conduct of platforms which impose conditions on:

- making public broadcaster apps available;
- making public broadcaster apps prominent;
- facilitation of app development and evolution; and
- making updated versions of public broadcaster apps available in the marketplaces in a timely manner.

Device and app marketplace providers should not restrict Australians' access to public broadcaster apps including because:

- public broadcasters are wholly government owned institutions providing services for the benefit of tax payers in line with identified public policy objectives; and

³ SBS internal data

⁴ SBS, *Corporate Plan 2020–21*, page 10—available at

https://www.sbs.com.au/aboutus/sites/sbs.com.au/aboutus/files/sbs_corporate_plan_2020-21.pdf.

⁵ SBS internal data, September 2020.

⁶ Australian Communications and Media Authority, *Communications Report 2018–19*, page 23—available at <https://www.acma.gov.au/sites/default/files/2020-04/Communications%20report%202018-19.pdf>.



- tax payers have invested in the National Broadband Network (**NBN**) which provides connectivity essential to the use of connected devices, which would otherwise not have been able to achieve nor sustain their level of sales and growth.

Australian taxpayers should benefit from unimpeded access to public broadcasting content and services which they have funded. They should, without limitation, be able to access SBS content, including essential public interest journalism and distinctive television and radio content that reflects Australia's diverse multicultural, multilingual and First Nations communities.

Recommendation – the ACCC should take a broad view in this inquiry of platforms whose conduct has the effect of limiting Australians' access to content provided by public broadcasters.

Specific CTV concerns relating to revenue sharing requests

SBS has appreciated the opportunity to raise concerns in the ACCC's Digital Platforms Inquiry about CTV manufacturer remuneration and prominence requirements. For example, in its February 2019 submission to the ACCC on the Preliminary Report of the Digital Platforms Inquiry, SBS submitted that:

Emerging business practices in the media market by manufacturers of connected televisions should be monitored to ensure equitable access to content providers' apps, including those provided by SBS.

The issue is whether failure to agree certain commercial arrangements with the device manufacturers—such as advertising revenue—will affect the prominence of positioning of apps within the user interface of devices.

For example, whether failure to agree a revenue sharing model would mean that a content provider's app is no longer pre-loaded on the 'Home' page menu, or listed as 'recommended'.

In addition to the direct impact on advertising revenue, SBS is concerned about the impact of this conduct on:

- consumers, to whom apps are 'recommended'; and
- competition, as consumer access to certain apps is relegated behind those apps which have a revenue sharing agreement in place.

Apps without a commercial agreement in place may also be given less priority for approval of new app releases and updates. This directly impacts the quality of consumer experience of apps which are increasingly used by the Australian public to view television content; and which, in the case of SBS, have been substantially funded by the tax payer.

Provision should be considered for public broadcasters, who are specifically funded to provide public interest journalism to Australians, to be carried on these platforms without charge.⁷

Furthermore, in its response to the Digital Platforms Inquiry Final Report, SBS noted that it supported Recommendation 3, which focused on fairer presentation of software options when

⁷ SBS submission on the Preliminary Report of the Digital Platforms Inquiry, pages 16–17—available at https://www.sbs.com.au/aboutus/sites/sbs.com.au/aboutus/files/35_final_accg_digital_platforms_inquiry_report_-_sbs_submission_-_february_2019.pdf.



users set up connected devices. SBS noted that principles applied to dealing with concerns about search engine and internet browser defaults were also relevant to dealing with concerns about the presentation of SBS apps.⁸

SBS's position remains that it will not enter into revenue-sharing arrangements. Unfettered access to SBS's taxpayer funded apps that deliver essential services to Australian audiences, including public interest journalism and Australian content, is of critical importance.

Indeed, the Office of Communications (**OfCom**) has recently recommended expanding the United Kingdom's must carry regime and associated Code of Practice for EPGs in relation to public broadcasters to ensure their online content remains not only accessible but prominent on CTVs and analogous systems for similar reasons.⁹ An overview of possible features of a must-carry framework is set out below.

A must-carry legislative framework to ensure public broadcaster services are available and prominent on connected devices	
Potential feature	Explanation
Obligation to carry	Mandatory obligation to make available public broadcasters' content (including linear services and on demand apps) on CTVs and similar operating systems at no cost to the broadcaster
Default position	Obligation to carry at no cost is the default position even if the broadcaster does not make a formal request
Visibility/prominence	Audiences should be able to find public broadcasters' content easily on CTV homepages (e.g. by a public broadcaster 'portal' by which to access their linear services and on demand apps) Public broadcasters' content should also be given protected prominence within CTV recommendations, direct access to individual programs and search results
Flexibility	Any regime should be flexible so that the relevant obligations can be quickly adapted to changes in technology and audience behaviour
Maintenance and updates to applications	Broadcasters would be required to take reasonable steps to maintain and update their app in conjunction with the CTV or similar manufacturer to ensure it remains supported by updated operating systems (subject to appropriate notice and explanation of changes)

⁸ SBS submission , page 10—available at https://www.sbs.com.au/aboutus/sites/sbs.com.au/aboutus/files/41_sbs_submission_-_treasury_consultation_-_accc_digital_platforms_inquiry_final_report_-_september_2019.final_.pdf

⁹ https://www.ofcom.org.uk/_data/assets/pdf_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf



Recommendation – competition law and policy responses to specific conduct by CTV manufacturers, including a must-carry regime and/or a mandatory code to ensure public broadcaster services remain available and prominent on connected devices.

IV. Dominant app marketplaces and imbalance of market power – common issues between app marketplaces and the News media bargaining code

The Issues Paper notes that Google and Apple play a significant role in the supply of apps, which are now fundamental to the operation of many businesses and the lives of consumers. These large platforms' dominance is not only in app marketplaces, but also in the consumers' choices of operating systems on which apps must run to function. As noted in the Issues Paper, over 99 per cent of smartphones worldwide use either the Apple iOS or Google Android operating systems.¹⁰

When considering the Issues Paper in comparison to the ACCC's concurrent but separate process on the News media bargaining code (the **Draft Bargaining Code**)—which seeks to address bargaining power imbalances between Australian news media businesses and digital platforms, specifically Google and Facebook—there are a number of common themes.

In broad terms, where issues are common to the two sectors or policy-development processes, or are analogous, it would be appropriate for the ACCC to treat them consistently in its response.¹¹

Additional requirements on app providers from changes made by app marketplaces

App marketplaces have made regular changes to their terms of service, required for participation and distribution of apps through these marketplaces; and changes, or updates, to their mobile operating systems on which apps run.

Similar to how algorithm changes on social media or search engine sites impact news media providers (an issue addressed by the Draft Bargaining Code), these changes instigated by app marketplaces also have a material impact on app providers, including in relation to the operation and reach of their apps. More often than not, these changes are made without sufficient consultation, if any, with affected app developers/providers; nor are they made with a sufficient notice period, if any.

Due to the dominance of these marketplaces and the lack of viable alternatives, SBS has been required to take significant and immediate actions in response to these changes on a number of occasions. Examples of the most significant changes to date include:

¹⁰ The Issues Paper, page 10.

¹¹ The Issues Paper does not deal with remuneration. However, were this Inquiry to deal with this issue in the future, SBS would make further submissions, noting that in the context of the ACCC's consultation on the Draft Bargaining Code SBS has submitted that it should be included in the remuneration framework.



- Addition of mandatory Sign in with Apple (**SIWA**) for any apps that offer other social log ins (such as log in with Facebook or log in with Google), subsequent to Apple's changes to its marketplace's guidelines¹²; and
- The removal of functionalities integral to SBS services without sufficient notice (e.g. Apple's recently announced changes to its version 14 of the iOS mobile operating system, for users to opt-in to Identifier for Advertisers (**IDFA**) tracking¹³—the functionality which assists SBS in providing a more tailored user experience).

This unilateral conduct by app marketplaces would not occur in a competitive market.

By way of comparison, under the Draft News Media Bargaining Code, digital platforms would be required to comply with a set of minimum standards, including in relation to providing notice of algorithm changes. These standards are summarised in the explanatory material as follows:

Responsible digital platform corporations must comply with minimum standards which require them to provide registered news businesses with advance notification of algorithm changes, provide information about the collection and availability of user data, develop a proposal to recognise original news and give advance notification of changes affecting the display and presentation of news content.¹⁴

In consultation on the Draft Bargaining Code, SBS noted that a 90 day notice period is preferred.¹⁵ This period would be also appropriate for notice from app marketplace providers.

This is particularly important where, for example:

- changes will materially affect the reach of an app—where the risk is that download, and use will decline;
- changes will materially impact the data flows to and from the app—where changes may impact activity such as data collection to support services targeted to user needs; or
- changes will require material redevelopment of the app—where app developers need sufficient notice to allocate resources to address the changes, and information to support that re-engineering.

Recommendation – Required and reasonable notice of change:

- ***App marketplace providers should be required to give reasonable notice of material changes to app developers***
- ***Reasonable notice should be given of both of the changes and the implementation date for the changes***

¹² <https://developer.apple.com/app-store/review/guidelines/#sign-in-with-apple>

¹³ <https://www.forbes.com/sites/johnkoetsier/2020/06/24/apple-just-made-idfa-opt-in-sending-an-80-billion-industry-into-upheaval/#6a51e126712c>

¹⁴ Draft Bargaining Code Explanatory Materials, page 7.

¹⁵ SBS submission to the ACCC, *News Media Bargaining Code – Draft Legislation*, August 2020 – available at https://www.sbs.com.au/aboutus/sites/sbs.com.au/aboutus/files/sbs_submission_-_news_bargaining_code_-_august_2020.pdf.



The lack of transparency in the display and prominence of apps

The Issues Paper seeks views on ranking of apps in app marketplaces, including transparency about the operation of search ranking. Views are sought on whether app providers have the information they need to increase the ranking of their app.

Given SBS is a taxpayer funded public broadcaster it is important that SBS apps are prominently displayed and available in app marketplaces accessed by Australians. To support this outcome, app marketplaces should provide more transparency as to how apps are ranked and how they can be promoted on their platforms.

The algorithm behind the marketplaces' ranking and display of apps (e.g. for users to see and choose from), is currently neither transparent nor known to app providers. This is also true for changes to these algorithms. It is not known whether app marketplaces preferentially rank or display their own apps over those of other providers.

To improve SBS's ability to ensure its apps are prominent, marketplaces should be required to provide clearer guidance on display and prominence of apps, than is currently available—including in relation to forthcoming changes. This would be consistent with the approach taken in the Draft Bargaining Code in relation to recognition of original news.

There should also be an obligation on app marketplaces not to favour their own apps over those of public service broadcasters.

By way of comparison, under the Draft Bargaining Code, digital platforms would be required to publish regularly-updated proposals on recognition of original news content. As set out in the explanatory material to the Draft Bargaining Code:

A responsible digital platform corporation must consult with registered news business corporations and publish a proposal to appropriately recognise original covered news content published by the registered news business corporations within six months of the ACMA registering the first news business corporation.

...

The responsible digital platform corporation then has an ongoing obligation to update its proposal every 12 months and consult all registered news businesses on the updated proposal.¹⁶

If digital platforms are required to publish information about how they will appropriately recognise original news content, app marketplaces should also be required to publish, and regularly update, guidance on how public broadcaster apps will be recognised, displayed and made prominent in their marketplaces.

Recognition, display and prominence measures are inter-related—these support availability of Australian content, news and information (such as content available via the SBS On Demand app and the SBS News app) which is fundamentally important to the maintenance of an Australian identity.

Recommendations –

¹⁶ *Exposure Draft Explanatory Materials, Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 (Draft Bargaining Code Explanatory Materials)*, page 19 – available at <https://www.accc.gov.au/system/files/Exposure%20Draft%20EM%20-%20NEWS%20MEDIA%20AND%20DIGITAL%20PLATFORMS%20MANDATORY%20BARGAINING%20CODE%20BILL%202020.pdf>.



- **Clearer guidance and regular updates on app display and prominence**
- **Non-discrimination provisions incorporated into a code on app marketplace conduct to prevent app marketplaces from favouring their own apps**

Challenges around user reviews of apps

An averaged user rating (such as a 'star' rating) of an app, seen in many app marketplaces, does not always accurately reflect the current version of an app. An app can be 'stuck' with a poor rating for a long period of time, even when reviews reflect obsolete versions of a given app.

The way in which the 'most helpful' ranking of user reviews is determined in marketplaces is also unclear. This is a default display option automatically set by some app marketplaces for many of their users.

Users and app providers would benefit from greater transparency in relation to how rankings related to user reviews are determined; an industry-wide approach is recommended.

Recommendation – Industry-developed guidelines or standards for display of user reviews:

- **Consistent, clear and fit-for-purpose guidelines or standards for the display of user reviews**
- **Guidelines or standards developed in consultation with all stakeholders, including users, app marketplaces, app providers and app developers**

Data – Unilateral changes by marketplaces impeding data collection by app providers

The Issues Paper notes that the ACCC is interested in views on the collection and use of consumer data and related matters, including:

- the potential for app marketplaces to use data to identify, and respond to, potential competitors to the marketplace's own apps; and
- information to consumers about data collection, including from apps.¹⁷

With respect to consumer information about data collection, SBS provides prominent links to its Privacy Policy, including from the app download pages on the Apple App Store¹⁸ and on Google Play.¹⁹ The SBS Privacy Policy sets out how SBS collects and uses data. Nevertheless, and by way of example, when a user logs in to an SBS app using an Apple ID, Apple also collects user's data. This may not be apparent to users, as they are using SBS's interface.

As noted in SBS's previous submissions to the Digital Platforms Inquiry, audiences' ability to trust in media organisations has never been more vital—in both presenting impartial and in-depth analysis, and in holding government, business and non-government organisations to account. It is therefore very important that SBS remains accountable and transparent to our

¹⁷ The Issues Paper, page 14.

¹⁸ <https://apps.apple.com/au/app/sbs-on-demand/id542090992>.

¹⁹ https://play.google.com/store/apps/details?id=com.sbs.ondemand.android&hl=en_AU.



communities in relation to the way that personal information is collected, handled and stored. It is therefore appropriate that the SBS Privacy Policy is available for review in the location, from app marketplaces, and across SBS's digital properties.

However, as a hybrid-funded public broadcaster, it is also very important that SBS be able to continue to use data to tailor its services, including advertising services.

The Inquiry should consider the issue of unilateral updates to app marketplace terms of service, policies or marketplace features which impede the ability of app providers to collect and use data in accordance with the law and their privacy policies.

The Inquiry should also consider whether unilateral changes that significantly impact an app providers' operations are a sign of uneven bargaining power that should be addressed.

Recommendation – The Inquiry should investigate the impact on app providers of unilateral changes by marketplaces which impede data collection essential to targeting services

V. Conclusion

SBS welcomes the opportunity to comment on the ACCC's *Digital Platform Services Inquiry's March 2021 Report on App Marketplaces – Issues Paper*, and would welcome further opportunities to be consulted on relevant matters.