

By email: digitalmonitoring@accc.gov.au

5 April 2023

Dear Sir/Madam

Digital Platform Services Inquiry – September 2023 Report on the expanding ecosystems of digital platform service providers – Issues Paper

SBS welcomes the opportunity to respond to the Digital Platform Services Inquiry – September 2023 Report on the expanding ecosystems of digital platform service providers – Issues Paper (**the Issues Paper**).

SBS engages with digital platforms in a range of ways, including as a user, publisher, advertiser, and competitor for audiences, and has made a number of submissions to the various elements of the *Digital Platforms Inquiry* and *Digital Platform Services Inquiry*.

We note the Issues Paper is primarily concerned with the expansion of products and services provided by digital platforms into new and adjacent market segments, and the potential this creates for behaviours which bring consumer and competition harms.

SBS would like to take this opportunity draw the ACCC's attention to the competition impacts and impacts on consumers of the business behaviours of connected television manufacturers and operating system (OS) providers (20% of whom utilise the Android/GoogleTV operating system).

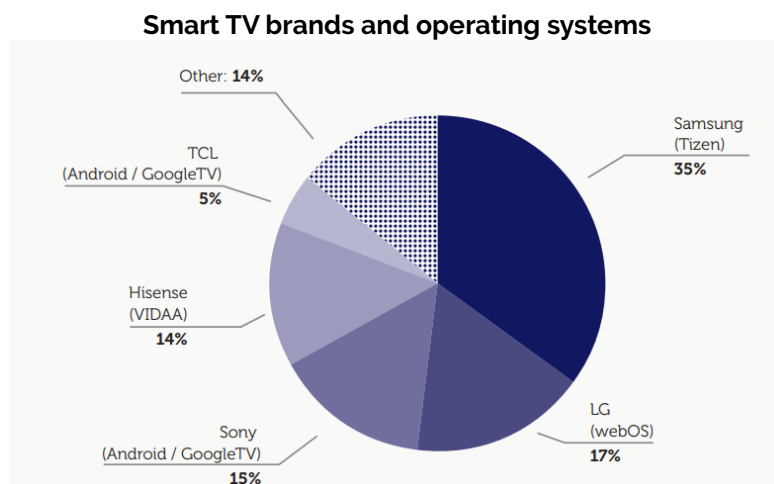


Image source: A/Prof Ramon Lobato, Dr Alexa Scarlata and Dr Bruno Schivinski, 'Smart TVs and local content prominence. A submission to the Prominence Framework for Connected TV Devices Proposals Paper', p 8

The Government has committed to regulate to ensure prominence of free-to-air television services and content on connected TVs, to ensure those services are easy for Australian audiences to find. A legislated prominence framework will seek to "ensure local TV services can be easily found on TV devices, so that they can continue to contribute to Australia's public and cultural life".¹

¹ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Prominence framework for connected TV devices – Proposals paper*, December 2022, p 5



SBS welcomes the Government's commitment to respond with a legislated prominence framework, and acknowledges the work already undertaken towards implementation. In this submission, we seek to ensure the ACCC is also cognisant of these issues as it continues its consideration of the potential competition and consumer impacts of platform service providers.

The need for regulatory intervention

A legislated framework to ensure the presence and prominence of free-to-air television services is necessary because of the control that TV manufacturers and OS providers exert over which programs and services are displayed to consumers on the on-screen display on televisions. This control essentially positions them as critical gateways between providers of content, and audiences. In the absence of regulation, these new gatekeepers are able to direct viewers to services which have paid the highest price in exchange for prominent/preferred placement on the on-screen display, or via pre-installation of apps, or service-specific buttons on remote controls.

SBS has also experienced manufacturers and OS providers demanding a share of revenue earned through SBS's services in exchange for carriage of the SBS On Demand app on the on-screen display (or 'primary access point'). Manufacturers which enjoy an overwhelming market share in Australia, dominating consumption through CTVs, are able to exploit this unequal bargaining position to seek to extract a revenue share (or other concession/consideration, such as a share of advertising inventory) as a condition of continuing to make the SBS On Demand app available. The revenue share sought from SBS is not reasonably necessary to fund the manufacturer's technical and other costs associated with supporting or carrying the SBS On Demand app – it is purely an effort to capitalise on market dominance.

Proposals (demands) have been put to SBS on a 'take it or leave it' basis, accompanied with threats to no longer make the SBS On Demand app available in future TV set ranges. Further incremental charges were proposed to be applied for access to the 'recommended' app suite or 'launch menu'.

An agreement was not reached with this manufacturer and SBS On Demand was demoted on the operating system as a result. There are other examples where SBS On Demand has been demoted from an OS's homepage without engagement with SBS from the manufacturer, due to international commercial arrangements taking precedence.

This behaviour is closely analogous to the Issues Paper's identification of pre-installation arrangements and default setting as types of conduct that "large digital platform service providers can engage in to leverage their market power across their services to limit competitive threats."² As noted in the Issues Paper, these behaviours can be "harmful to competition where they prevent or inhibit" effective competition.³

The Issues Paper has also identified that competition issues arise where "platforms have the ability and incentive to leverage market power across their services and engage in behaviours" which inhibit competition.⁴

However, there are also substantial consumer impacts, namely the impact on audiences for SBS's publicly funded, public service content. Manufacturers and OS providers are positioning themselves as

² Issues Paper, p 6

³ Issues Paper, p 6

⁴ Issues Paper, p 6



intermediaries between audiences and the content they fund through Government investment in SBS. This limits choice and dilutes the intended impact of SBS's public interest services.

SBS believes this kind of market behaviour, whereby a gatekeeping position has been established and exploited, to the detriment of consumers, has sufficiently detrimental consumer and competition impacts to be considered by the ACCC in preparing its report. Whilst we note the Government has already committed to legislate to address presence and prominence of free-to-air television services, the consideration of the issue by the ACCC, and the ACCC's input into the regulatory reform process, would be welcome.

In the context of the ACCC's consideration of smart home devices, the interoperability between smart home devices and connected TVs, and the potential circumvention of prominence requirements on connected TVs, should be carefully considered. For example, when a smart speaker is asked to surface audio-visual content, there is the potential for self-preferencing where the smart speaker is provided by a platform/company which also provides audio-visual content streaming services available on connected TVs.

We also note that issues relating to prominence of local radio services in car entertainment systems and on smart speakers are also of concern to the local radio industry (including SBS) and the ACCC's exploration of the impact on consumers of platforms' expansion into smart home devices may provide a useful information base for the progress of those issues.

The appropriate regulatory response

SBS has welcomed the Government's commitment to legislate to ensure the prominence of local TV services on connected TVs and devices, and has been participating fully in ongoing consultation processes. SBS also notes the Minister's support to consider prominence issues in relation to car audio systems and connected devices.⁵

All free-to-air television broadcasters, including national broadcasters and commercial broadcasters are aligned regarding the appropriate model for regulatory intervention, and have proposed an approach which will effectively address the issues in a timely and direct fashion (an industry Code that establishes a must-carry and must-promote prominence framework under the *Competition and Consumer Act 2010* (CCA), supported by minor changes to the *Broadcasting Services Act 1992* (BSA) and *Customs (Prohibited Imports) Regulations 1956*).

Full details of the proposed regulatory model can be found in the submissions of [SBS](#), the [ABC](#) and [Free TV Australia](#) to the Government's recent consultation process.

Thank you again for the opportunity to submit to the ACCC's consideration of these issues. If you would like any further information, please contact me ([REDACTED]).

Yours sincerely,

[REDACTED]

Clare O'Neil

Director of Corporate Affairs

⁵ Michelle Rowland, *Media Policy: Priorities for a New Government*, speech to the CAMLA Seminar, 14 November 2022