SBS SUBMISSION TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION

DIGITAL PLATFORM SERVICES INQUIRY – MARCH 2025 – FINAL REPORT ISSUES PAPER (GLOBAL DEVELOPMENTS AND EMERGING COMPETITION AND CONSUMER ISSUES)

AUGUST 2024

SBS appreciates the opportunity to respond to the Australian Competition and Consumer Commission's (ACCC) *Digital Platform Services Inquiry – March 2025 – Final Report* Issues paper (the **Issues Paper**). SBS has made a number of submissions over the life of the Inquiry on a range of issues that impact the delivery of our content and services to Australian audiences, in line with our Charter.

Australian society is at a critical juncture, with fracturing social cohesion. It is a well-established principle that a stable and cohesive democratic society needs credible, trusted sources of news and information that can be readily and freely accessed by community members. We are at a tipping point, with a range of factors coalescing to create a dangerously febrile social environment - including the increased difficulty in accessing trusted news online and on third party platforms, risks to the sustainability of public interest journalism, the rise of generative AI, proliferation of mis- and disinformation, and the use of algorithms to funnel users into echo chambers that do not provide a diversity of views or perspectives. There is an urgent need for Government to take decisive action to address these matters as a single package to prevent further social disruption and take purposeful action to rebuild cohesion in the community.

Key issues

The Issues Paper covers a number of areas relevant to potential or emerging competition and consumer issues for digital platforms which warrant timely policy or regulatory interventions.

This submission explores those issues as they impact on SBS and its audiences.

- the News Media Bargaining Code (NMBC, or the Code) and Meta;
- discoverability and prominence of SBS's taxpayer-funded content, apps, and services on digital platforms; and
- generative artificial intelligence (AI) services.

This submission's Appendix highlights the issues which the ACCC has examined previously as part of its Digital Platforms work where there remain competition and consumer issues that have not yet been resolved.

NMBC and Meta – regulatory intervention is warranted

There have been a number of notable developments relating to the carriage of news and information on social platforms since the commencement of the NMBC framework which have undermined the intended public policy objectives, namely the compensation for news organisations for the use of their content by social media platforms. In particular, actions taken by Meta pose a serious risk to Australians' ability to access trusted and reliable news and information on its platforms. When the NMBC came into effect, Meta reached

agreements with a number of news organisations to recognise the value of their content for Meta's users (though no agreement was reached with SBS).

Since that time, it is SBS's observation that news content appears to have been continually 'downranked' by Meta platforms, potentially through opaque changes in their algorithms' settings which determine what users see on the platforms.[1] SBS has previously raised concerns as part of the ACCC's Digital Platforms work regarding the transparency of these algorithms.

In the past 12 months, Meta has chosen to block news articles on its platforms in Canada, and earlier this year advised Australian news media outlets with which it had agreements to pay for news content that it would not be renewing those arrangements or entering into any new agreements of that nature. More concerning still has been Meta's recent moves to unilaterally limit "political content" for Instagram users – content related to things like laws, elections, or social topics[2] - significantly reducing the discoverability for users of a broader and more diverse range of news and information sources and impacting the consumption of news on the platform – a policy that risks "undermining democratic engagement".[3]

If the Government opts to designate Meta under the NMBC or implements some other mechanism to require Meta to contribute additional funding to support the production of news content, then there is a significant risk that Meta will take the same actions that it has done in Canada and withdraw news and information from its platforms in Australia. This would have the effect of removing reliable, trusted news and information from Meta platforms, escalating the proliferation of dis- and misinformation.

This is despite the fact that Australian consumers increasingly utilise social media platforms for news. The recently released *Digital News Report: Australia 2024*[4] published in June 2024 found that almost half of Australians (49%) use social media to access news, an increase of 4 percentage points from last year. The figure is even higher at 57% among those born between 1981 and 1996 (Gen Y, or Millennials), and at 74% among those born between 1997 and 2012 (Gen Z), a significant 15% increase from 2023 for Gen Z. Importantly, one in four Australians say social media is their main source of news - for Gen Z the proportion is almost two-thirds (60%), a significant increase of 17% since 2023.

The removal of news from Meta platforms would have a disproportionate impact on SBS audiences, because First Nations peoples and a number of multilingual communities have higher engagement with SBS platforms on social media use than the general population.

It is therefore timely and important for policymakers to urgently consider other available public policy and/or regulatory interventions in this area given the continuing dominance of the digital platforms such as Meta and their capacity to materially impact Australians' access to reliable news and information on their platforms. One possible option is for the Government to implement a 'must-carry' regime, to require social media platforms operating in Australia to carry news and information from trusted and established sources. While a must-carry regime would not solve the issue of fair remuneration for news content on those platforms (including the remaining lack of a deal between Meta and SBS) which the NMBC sought to address, it would be a better outcome than Australians being unable to access trusted and reliable news services on these platforms.

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[1] SBS's internal data and analyses

[2] See: https://about.instagram.com/blog/announcements/continuing-our-approach-to-political-content-on-instagram-and-threads/ and https://www.abc.net.au/news/2024-03-26/instagram-limiting-political-content-threatens-democracy/103629990

[3] https://www.independent.co.uk/tech/meta-facebook-instagram-b2524059.html

[4] Park, S., Fisher, C., McGuiness, K., Lee, J., McCallum, K., Cai, X., Chatskin, M., Mardjianto, L. & Yao, P. (2024) *Digital News Report: Australia 2024* (Canberra: News & Media Research Centre, University of Canberra), pp 79-81

We note other stakeholders have indicated a levy or tax on social media platforms as an option, with funds raised directed to investment in public interest journalism, which would also warrant further investigation.

We note the ACCC has provided advice to Government on these developments. Given the criticality of access to accurate and trusted news and information on Meta platforms and the disproportionate market power of Meta, ongoing attention from the ACCC is warranted alongside any interventions that the Government chooses to progress.

Discoverability and prominence of SBS's taxpayer-funded content, apps, and services should be supported

SBS holds a unique place in the Australian media landscape, inspiring all Australians to explore, respect and celebrate our diverse world and in doing so, contributes to an inclusive and cohesive society. Given the important role it plays in Australian society and its remit to serve all Australians, SBS's content, apps, and services should be easily discoverable by the Australian public, regardless of their preferred mode of access.

SBS welcomed the passage of the *Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024* (**Prominence framework**), which recognised the need for Australians' to be able to easily find and access SBS and other free television content on Smart TVs and comparable connected devices. However, there remain other devices, platforms, and marketplaces where accessibility of SBS services, and/or easy navigation and discovery remain an issue. They include smart speakers or connected audio devices in cars, app marketplaces, and search services.

The discoverability and prominence of SBS's services on digital platforms is often dependent on each platform's algorithms. These algorithms are very opaque and there is a risk that each platform's self-preferencing practice delivers discoverability and prominence disproportionately (or at times, solely) to their own products or services.

It is therefore vital that these settings are subject to ongoing scrutiny in line with the same principles underpinning the Prominence framework, with regulatory intervention implemented in the event there is evidence that Australians' ready access to SBS services is compromised or placed at risk.

Frameworks to manage the evolution of generative AI

As noted in the Issues Paper, there are a range of processes underway assessing optimal frameworks for managing generative AI and its associated risks and opportunities, including emerging issues of competition, market power, and how the potential of concentrated ownership of generative AI services will impact on Australia's news and media industry, including in relation to copyright and intellectual property.

Generative AI is dominated by large providers such as Microsoft (Chat GPT) and Alphabet (Google), who control the narratives of the output of their AI services, tools, or models. SBS supports the ACCC's monitoring and where appropriate, acting to address any issues of concern that may have a detrimental effect on Australian markets from a competition and consumer perspective, including the unauthorised use of content, and/or the impact of specific agreements reached with some news and information services. Any regulatory settings should not deter positive innovation and deployment of generative AI.

As noted in the Appendix, SBS has already raised concerns in response to the previous Issues Paper regarding the interaction of generative AI and search, with the potential for incorrect or misleading AI generated search results to displace accurate and trusted news and information from providers such as SBS. It is acknowledged that the ACCC will address this matter in its 9th report due in September 2024.

Key examples of these issues include:

- AI services ingesting, or training (themselves) with, other entities copyrighted or intellectual property without permission, proper reference, credit, or compensation; and
- proliferation of websites that repurpose content of other websites by utilising AI, with an intent to deceive audiences.

SBS recommends the ACCC consider regulatory options for managing this development, including the potential implementation of a framework similar to the NMBC, or a revision of copyright laws.

B2B services, transparency, and the development of LLMs

Of particular concern to SBS is the emerging behaviour of large, incumbent service providers to unilaterally vary the terms of their arrangements with businesses to use their proprietary information to assist them in building their Large Language Models (LLMs) or otherwise develop their AI products and capabilities.

As the ACCC's Ad Tech Inquiry examined, many of these service providers are necessary partners due to their vertical integration and market dominance, and those operating in the market have no option but to engage with them for products and services that are essential to business operations.

These same service providers now have the potential to leverage their market power and dominant position to change the terms of engagement to essentially require businesses such as SBS to provide access to its own data and intellectual property to feed their AI development. SBS has no visibility or transparency as to how its information is being used by these partners, and whether its information is being used to create or develop services that may one day be in competition with SBS (for example, in the generation of information or news in multiple languages in response to a search query or AI input).

As their market power has grown, third party social media platforms have imposed frequent changes to their terms and conditions to further their commercial interests.

This troubling pattern of conduct warrants the immediate attention of the ACCC with regard to the use of market power.

Overall competitive advantage, and market power, of AI providers should also be explored

More generally, SBS supports exploration by the ACCC of any emerging or existing power imbalances, as well as any market advantage pertaining to large tech giants that provide AI services and tools. These types of providers usually also possess a vast amount of data, a competitive advantage with which smaller or emerging providers cannot compete.

As an example, if Amazon Web Services (AWS) is being utilised by an organisation, Amazon's own AI services are also on offer as self-preferenced services by Amazon. If organisations or consumers seek to utilise other AI services, such services may not be compatible with AWS. In a similar vein, if Microsoft's Azure cloud platform is utilised, then its Co-Pilot AI tools are self-preferenced by Microsoft.

Other issues

Other issues that SBS considers will benefit from the development of regulatory settings have previously been outlined by SBS in its submissions to the ACCC's digital platforms inquiry. Please see the Appendix for a summary of SBS's recommendations on these matters.

SBS appreciates the opportunity to respond to the ACCC's Issues Paper, and looks forward to participating in any further consultation to achieve desired policy outcomes regarding digital platforms.

APPENDIX – OTHER ISSUES THAT WILL BENEFIT FROM APPROPRIATE REGULATORY SETTINGS

Issues that should be addressed	SBS's recommendations
Issues relevant to app marketplaces, search services, and potentially a range of AI services	
Notice by digital platforms In 2020 during the consultation on the Draft NMBC, SBS noted that a 90-day notice period of upcoming changes by digital platforms is preferred.[5] This period would be also appropriate for notice from app marketplace and search providers, and potentially a range of current and upcoming AI services. *Search services* The sufficient notice is particularly important where, for example: • changes will materially impact the ranking of search results; or • changes will materially impact the presentation of search results—this includes where presentation of paid or affiliated search results will impact the presentation of organic search results. *App marketplaces* The sufficient notice is particularly important where, for example: • changes will materially impact the reach of an app—where the risk is that the app's download rate, 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	To address these issues, among other possible considerations are mandatory codes of conduct and obligations proposed by the ACCC in December 2022 through Recommendation 3 and Recommendation 4 respectively, in the *Digital Platforms: Government consultation on ACCC's regulatory reform recommendations* Consultation Paper. These should include specific requirements that: • digital platforms be required to give reasonable notice of material changes; • reasonable notice should be given of both changes, and the implementation date for the changes; and • address self-preferencing practice.

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

Issues that should be addressed	SBS's recommendations
address the changes, and information to support that re-engineering. ***Self-preferencing*** • Self-preferencing by app marketplaces where preference given to their own apps • Self-preferencing by search services where preference is given to their own or affiliated services, such as Google search service giving preference to YouTube search results because Google also owns YouTube), or to those with which the search services have commercial deals)	
Other issues regarding power imbalances	
• Inability or lower ability for other digital market participants to relatively access users' data, when compared to the ability of large digital platforms • Ad tech market's issues – the opacity, concentration of market power (dominated by Google and Meta), self-preferencing (and conflicts of interest), and the trend of mergers and acquisitions	As above, among other considerations, mandatory codes of conduct and obligations proposed by the ACCC in December 2022 through Recommendation 3 and Recommendation 4 respectively, in the *Digital Platforms: Government consultation on ACCC's regulatory reform recommendations* Consultation Paper.
App marketplaces In relation to app marketplaces, the dominating duopoly by Apple's App Store and Google Play store should also be addressed. The duopoly not only restricts consumers' choices, including in relation to prices, but also making any negotiations between app developers and these dominant marketplaces practically impossible. These negotiations involve but are not limited to technical and revenue-sharing matters.	The duopoly in the app marketplaces should be addressed through anti-competition laws and measures, taking into account the significant power imbalance between dominant app stores and app developers, and the impacts of the duopoly on consumers.
Issues relevant to the ad-tech market	
Concentration of market power	SBS would welcome additional measures that address vertical integration and the consequential concentration of market

Issues that should be addressed	SBS's recommendations
In particular, Google has a long-standing history of preferencing its own technology in the Ad Tech ecosystem. It owns and has acquired a large number of platforms (including buy-side, sell-side, data, and server) in the market, enabling it to profit from a significant imbalance of market power. It is able to leverage one area of its business to strengthen another, including by internally sharing a significant amount of consumer data collected across its platforms and from other sources.	power, including arising from mergers and acquisitions in the technology sector.
Transparency in the Ad Tech supply chain It is important for SBS, as a publisher, to have a clear understanding of the sale price (per advertisement impression) to the buyer, in comparison to the payment that SBS receives.	SBS supports transparent and uniform reporting among supply-side platform (SSPs), demand-side platforms (DSPs), data management platforms (DMPs), and other market intermediaries.
Changes to consumer data regulation SBS notes the following in relation to consumer data, as published in the ACCC's *Digital advertising services inquiry* Final report, in August 2021— 'We [ACCC] made two recommendations in the DPI Final Report that could help to address these consumer harms, which we continue to support. ***Prohibition on unfair trading practices*** In the DPI Final Report, we recommended that the Australian Consumer Law (ACL) should be amended to introduce a prohibition on certain unfair trading practices. We remain of the view that such a prohibition would enable the ACCC to undertake strategic enforcement action to address the risk of ad tech providers, advertisers, publishers, and digital platforms collecting or using data in ways that have the potential to result in substantial consumer harm, but is conduct not captured by the existing provisions of the ACL. The recommended amendments would also align Australia's legislation with overseas jurisdictions. We are currently working alongside our fellow ACL jurisdictions, and the Australian Government, to progress our consideration.	Any changes relating to consumer data and use should take into account consumers' consent; and should apply uniformly to all publishers and platforms. However, SBS does not support measures that may result in 'consent fatigue' among consumers. SBS supports introduction of data separation mechanisms, which would further support market competition. In relation to consumer privacy, SBS notes that a key milestone of the current Privacy Reforms, by the Attorney General's Department (AGD), is imminent. SBS has been participating in fora hosted by, and correspondence with the AGD, and will continue to respond to relevant reforms put forward by the AGD.

Issues that should be addressed	SBS's recommendations
OAIC privacy code for digital platforms In the DPI we also recommended that an enforceable privacy code of practice should be developed by the OAIC for digital platforms. In its response, the government reconfirmed its earlier announcement that it would introduce legislation to enable the OAIC to develop a binding privacy code to apply to social media platforms and other online platforms that trade in personal information. The Attorney General's Department has indicated it is expecting to release an exposure draft of legislation, for public consultation, in 2021.'[6]	
Dispute resolution	
Significant obstacles for consumers and organisations remain in enforcing existing (and upcoming) rights against digital platforms, and dispute resolution processes are often unclear, costly, and uncertain. These are in relation to disputes arising from, but not limited to: • insufficient notification by the digital platforms of upcoming changes (including algorithms); • self-preferencing practices by major digital platforms in the ad-tech market and app marketplaces—where 'big players call all the shots'; • inappropriate costs and charges in the currently opaque ad-tech supply chain, where there remains significant power imbalance between major digital platforms and other market participants; • scams and their removal or prevention; and • moderation on social media platforms.	Multiple dispute resolution processes and the ombuds scheme proposed by the ACCC in December 2022 through Recommendation 2 in the *Digital Platforms: Government consultation on ACCC's regulatory reform recommendations* Consultation Paper – these should be implemented, and expanded so that they are accessible to all businesses.

[6] ACCC's Digital advertising services inquiry Final Report, August 2021, page 41, available at https://www.accc.gov.au/system/files/Digital%20advertising%20services%20inquiry%20-%20final%20report.pdf