

**SBS SUBMISSION TO THE TREASURY – A NEW DIGITAL COMPETITION REGIME PROPOSAL  
PAPER  
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**KEY POINTS**

- The Special Broadcasting Service (**SBS**) welcomes the opportunity to provide a submission to the Treasury's *A new digital competition regime proposal paper* (**proposal paper**).
- SBS has actively participated in the ACCC's investigations and consultations over the last 5+ years, as the anti-competitive behaviour of digital platforms can have material impacts on SBS's delivery of public interest services to its audiences.
- As part of this engagement, SBS has previously detailed anti-competitive behaviours by digital platforms and their damaging consequences, including the reduced visibility of taxpayer funded public broadcasting content on digital platforms and the impact on SBS's commercial activities. The lack of fair remuneration from some digital platforms for the use of SBS content, self-preferencing behaviours, opaque ad-tech supply chains, and technology providers imposing unilateral and unfair terms and conditions in contracts are issues of particular concern to SBS.
- There is an urgent need to address the power imbalance between digital platforms and news providers, which currently results in the use of public interest news and other content on some digital platforms without fair remuneration. The News Media Bargaining Code failed to provide sufficient incentive for Meta to negotiate fair remuneration for the use of SBS's content across Meta's platforms and has not resulted in an ongoing incentive for Meta to agree terms with other Australian news media operators. Despite this, the News Media Bargaining Incentive has not been progressed since its announcement in December 2024. After many years of discussion about this issue, and a sustained accumulation of evidence regarding the impact on journalism of this competitive imbalance, it is time to act swiftly to safeguard the sustainability of Australia's news media industry.
- Regarding Treasury's proposal paper, SBS supports the proposed framework and submits that the new regime should be implemented as soon as possible. Further, we seek to highlight the following key points:
  - SBS strongly supports the prioritisation of app marketplaces and ad tech services for designation, having previously highlighted a range of problematic behaviours and practices by the dominant players in these markets, which directly impacts consumers/audiences. However, there is no reason to delay designation of social media services and search services. Anti-competitive behaviours in these markets have been extensively detailed and evidenced over the course of the ACCC's inquiries.
  - The new framework must be flexible enough to potentially apply to emerging platforms that come to hold dominant, gate-keeping positions in critical digital markets in the future. Whilst the proposed framework provides this flexibility, ongoing engagement with industry should continue to support monitoring of emerging digital platform services and competition risks over time. The concentration of AI product and service providers across a small number of the largest technology firms with



existing dominant positions in other digital platform markets (e.g., Google, Microsoft), is a highly relevant example.

- The ACCC, as the competition regulator, should be empowered to make evidence-based designation decisions, in addition to the Minister. This is likely to support timely decision making. The ACCC would need to be resourced and given appropriate investigative and enforcement powers to support this role.
- Clear quantitative thresholds should be a primary consideration for designation decisions, with qualitative factors also considered to support decision-making where quantitative thresholds are difficult to ascertain or otherwise unavailable. We further support the application of specific obligations for specific services/functions through subordinate legislation. Consultation with the broader industry will be crucial here.
- Designation decisions should be able to be automatically rolled over for another 5-year period if there has been no substantive change to the position held by a designated digital platform in the Australian market.

## I. Introduction

SBS plays a critical and unique role in Australia's media ecosystem providing news, information, and entertainment in more than 60 languages for all Australians, with a focus on serving multicultural, multilingual, and First Nations communities. SBS engages with digital platforms in multiple ways, including as a user, publisher, advertiser, and a competitor for audiences. Our presence across digital platforms is essential for us to reach all audiences where they are, with SBS news and other content accessed through a range of non-SBS owned platforms including search engines (e.g. Google), social media (e.g. Facebook), and video-sharing platform services (e.g. YouTube).

SBS has engaged with the consultations and reports issued by the Australia Competition and Consumer Commission (ACCC) over the course of its inquiries into digital platforms since 2018. Our submissions have raised concerns regarding anti-competitive behaviours and harmful business practices. These submissions include:

- [Submission](#) to the ACCC's Digital Platforms Inquiry Issues Paper (April 2018)
- [Submission](#) to the ACCC's Digital Platforms Inquiry's Preliminary Report (February 2019)
- [Submission](#) to the Treasury's consultation on the ACCC's Digital Platforms Inquiry Final Report (September 2019)
- [Submission](#) to the ACCC's Advertising Services (Ad Tech) Inquiry Issues Paper (May 2020)
- [Submission](#) to the ACCC's March 2021 Report on App Marketplaces (October 2020)
- [Submission](#) to the ACCC's Digital Advertising Services Inquiry (March 2021)
- [Submission](#) to the ACCC's March 2023 Report on Social Media Services Issues Paper (September 2022)
- [Submission](#) to the Senate Select Committee's Inquiry into Foreign interference through social media (February 2023)
- [Submission](#) to the Treasury's Digital Platforms: Government Consultation on ACCC's Regulatory Reform Recommendations (February 2023)
- [Submission](#) to the Senate Committee on Economics Inquiry into the Influence of International Digital Platforms (February 2023)
- [Submission](#) to the ACCC's Digital Platform Services Inquiry – September 2024
- report revisiting general search services Issues Paper (April 2024)
- [Submission](#) to the ACCC's Digital Platform Services – March 2025 – Final Report Issues Paper (August 2024)



While we do not seek to repeat the entire body of evidence in these previous submissions, there is an additional business practice that this new regime should seek to address, and which reinforces the need for prompt implementation. SBS has observed that dominant ad tech platforms providing buy-side and sell-side solutions will arrange their contracts so that there is limited liability attached to the platform for failures that occur within their own technology ecosystem. As a result, in these circumstances, SBS has limited ability to pursue the digital platforms for compensation for revenue losses resulting from outages that prevent the delivery of advertising. As an example, in 2023 a technical issue in the delivery of advertising between Google buy-side and sell-side platforms resulted in ad breaks being dropped from SBS On Demand for a period of time. This resulted in a revenue loss for SBS, which it was unable to recover from Google.

SBS is strongly supportive of regulatory reform to address anti-competitive and harmful market behaviour and business practices by digital platforms. This would benefit SBS and its audiences by supporting the visibility of taxpayer funded services, and reducing the risk of SBS being charged inappropriately or not compensated where advertising revenue is lost due to platform outages, supporting greater spending on content in line with SBS's Charter. It is essential that this reform is not unduly delayed, to support the realisation of the benefits of increased competition as soon as possible.

**II. SBS broadly supports the proposed new digital competition regime framework, though we consider that it would be beneficial for the ACCC to be able to designate dominant digital platform entities in addition to the Minister, to support timely decision-making**

To be effective over time, the new digital competition regime must be agile, and capable of addressing new and emerging digital platform services which may come to hold dominant positions in Australian markets. We are pleased to see that this flexibility is provided for in the Treasury's proposed regulatory framework. The capacity to add new services to the list of digital platform services specified in legislation and regulated under the regime will be essential as technology and its adoption across Australia changes.

We further support the primary use of quantitative thresholds, supported by qualitative factors when necessary, to target the regime to the most significant players in digital markets. The consideration of qualitative factors including market power, market position, barriers to entry for other competitors, pricing power and vertical integration, will support designation and the delivery of the new regime's benefits where quantitative thresholds – such as Australian revenues or users – is difficult to ascertain.

While high quantitative thresholds would likely support the effective targeting of those entities that hold critical positions in digital markets, for the avoidance of doubt, Government services operating online products, such as SBS and the ABC, should be explicitly excluded from the scope of the regime, to avoid unintended regulatory capture and undue regulatory burden.

The provision of subordinate legislation with detailed obligations applying to designated entities' services or functions will play a critical role within the regime. This component allows the regime to effectively target anti-competitive behaviour. It will be critical that these obligations are effectively tied to the delivery of particular functions from a designated entity, so that they continue to apply even where there are changes to the service delivering these functions. It will also be important that the broader industry, not just designated platforms, are consulted in the design of the requirements within subordinate legislation. This is to ensure that subordinate legislation is comprehensive in targeting anti-competitive behaviour and practices, and to avoid the risk of unintended consequences or ineffective requirements.

We suggest that there would be benefits to the ACCC having the power to make designation decisions, in addition to the Minister. This includes efficiency benefits, with the capacity for the



regulator to support timely designation decisions. It will be important for the ACCC's to have the appropriate investigation and enforcement powers in place to carry out this role.

We further consider that there should be the capability for designation decisions to be automatically rolled over for another 5-year period, if there has been no substantive change to the position held by a designated digital platform. This would further support the efficiency of the regime.

### ***The competitive and consumer risks from generative AI platforms***

The rise of generative AI products and services and the rapid pace of change highlights the need for a flexible and agile regulatory regime. Today, this market is dominated by large technology companies, including those that already hold positions of market power in important digital markets (e.g., Microsoft, Amazon, and Google). These companies are able to leverage their existing market positions in the development and deployment of their generative AI products, including in relation to the use of data attained through their dominance in other areas of operation.

SBS has raised concerns about generative AI products and services in its previous submissions and has recommended that the ACCC consider regulatory options to address these. Our key concerns include:

- **The capacity for large, incumbent technology providers to unilaterally vary the terms of their arrangements with businesses to use and/or acquire proprietary information.** Many of the large technology companies are necessary partners due to their vertical integration and market dominance in critical areas. We have seen previously how third-party social media platforms and app marketplace providers can impose changes in their terms and conditions without adequate engagement with impacted organisations or sufficient notice. Now, large technology companies 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 AI development. SBS has no visibility as to how its content and information is being used by AI developers.
- **A lack of attribution and compensation for copyrighted material or intellectual property used by AI products and services.** Related to the above, AI can be trained on large datasets scraped from online sources including SBS news, audio, and video content, unless specific action is taken by publishers to prevent this from occurring. This takes place without permission, proper reference, credit, or compensation. This decouples content producer brands from audiences, and undermines the business models for producing news and content. SBS has recommended that the ACCC consider potential measures similar to the News Media Bargaining Code previously, or revisions to copyright laws, to ensure this behaviour does not continue to occur at the expense of news and content production.
- **The escalating risk of misinformation.** There is risk of the proliferation of websites that repurpose content of other websites utilising AI with an intent to deceive audiences. There is also the risk of AI producing false information in response to queries or requests.

We also support ongoing monitoring of anti-competitive behaviours and practices that could emerge, and which have been demonstrated in other digital platform markets, such as the risk of self-preferencing in the responses delivered by generative AI products and services, or the tying of AI product and services to other services provided by the same organisation.



### **III. We strongly support the prioritisation of app marketplaces and ad tech services for designation. There is also a significant body of evidence supporting the additional prioritisation of social media and search services, built over the course of the ACCC's Digital Platforms inquiry**

SBS supports the prioritisation of app marketplaces and ad tech services for designation. Our previous submissions to the ACCC have covered a range of anti-competitive behaviours from dominant platforms within these markets, including self-preferencing, the risk of inappropriate costs and charges, and lack of transparency and notice around material changes impacting smaller market players. Addressing these behaviours would have material benefits including supporting the visibility of SBS services funded by taxpayers, removing the risk of SBS being charged inappropriate costs to deliver its taxpayer funded services, and empowering SBS to deliver and target content to audiences more cost effectively.

SBS further supports the prioritisation of social media and search engine services for designation. The dominance of platforms in these markets has been explored extensively by the ACCC through its inquiries into digital platforms, with regulatory safeguards recommended to support greater competition and better outcomes for consumers. The range of target obligations identified by the ACCC in relation to search engine services includes preventing self-preferencing, tying, exclusive pre-installation, addressing data advantages, ensuring fair treatment of business users, and improving switching, interoperability, and transparency.

For social media services, the ACCC highlighted issues with the significant market power of Meta, data collection and use practices, and a lack of advertising transparency among other issues. SBS's submissions to related inquiries have provided evidence in relation to search engines' self-preferencing behaviour, the frequent changes imposed by social media platforms through their terms and conditions to further their commercial interests, and the lack of transparency from dominant players in both markets, including in relation to algorithm changes.

Anti-competitive behaviours of dominant platforms in social media and search engine markets have significant consequences for SBS and its audiences. These services are ubiquitous across Australian communities and are key avenues for audiences to engage with SBS content, including Australia's multilingual, multicultural and First Nations audiences that SBS provides services by and for pursuant to its Charter. When search engine and social media services act as gatekeepers, this can negatively impact audiences by limiting, or making it more difficult for them to find, trusted, relevant and freely-available news, information and entertainment. The need for regulatory intervention to address this is well documented, including through our previous submissions, and it is our view that designation of dominant platforms in these markets should also be prioritised to deliver the benefits of the new regime faster.

### **III. Conclusion**

SBS appreciates the opportunity to comment on the Treasury's *A new digital competition regime Proposal paper*. This is an important piece of work to bring forward a new ex ante regulatory regime that fosters greater competition in digital platform markets and addresses anti-competitive behaviour by dominant global players. SBS supports the introduction of the new regime and the benefits this promises, including removing barriers to the visibility of SBS's services to audiences across Australia, removing the risk of inappropriate charges being levied from SBS to provide services funded by taxpayers to audiences, and supporting fair negotiations on the issue of compensation where advertising revenue is lost due to platform outages. It is important that the introduction of the regime is not unduly delayed, given its benefits to Australian audiences.

SBS broadly supports a flexible regulatory framework that can be amended over time as the market changes, the use of quantitative and qualitative factors to target the most significant market players, and the introduction of service-level obligations through subordinate legislation which is developed in consultation with industry. We further support the ACCC being



empowered to make designation decisions in addition to the Minister, to support the timely designation decision-making.

Ad tech services and app marketplaces are the appropriate priorities for the designation of services under the regime given the issues arising with vertical integration and dominance of these services. The designation of social media and search engine services should also be considered as a key priority, noting that these markets have been a focus of the ACCC's work to date, and the case for intervention is clear.

SBS looks forward to engaging with Treasury further as the details of the new proposed regime are developed and finalised.

Finally, there remains an urgent need to address the ongoing power imbalance between digital platforms and news providers, which continues to result in the use of public interest news and other content on some digital platforms without fair remuneration. The News Media Bargaining Code did not provide sufficient incentive to bring Meta to the negotiating table with SBS and has not resulted in an ongoing incentive for Meta to agree terms with other Australian news media operators. Despite this, the News Media Bargaining Incentive has not been progressed since its announcement in December 2024. After many years of discussion about this issue, and a sustained accumulation of evidence regarding the impact on journalism of this competitive imbalance, it is time to act swiftly to safeguard the sustainability of Australia's news media industry.