

FECCA submission to the inquiry into the competitive neutrality of the national broadcasters

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Online submission

Federation of Ethnic Communities' Councils of Australia

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ABOUT FECCA

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations.

FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to Government and the broader community. FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

FECCA is grateful for the opportunity to input into the consultation process regarding the competitive neutrality of the Special Broadcasting Corporation (SBS).

FECCA gives consent for this submission to be published in whole or in part.

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Question 8

Considering the commercial activities of the national broadcasters (eg where they are selling or purchasing goods and services), is there evidence that they have taken undue advantage of their government ownership, to the detriment of competitive outcomes?

- In accordance with the SBS Charter, SBS content on its television and radio services is targeted for specific – and sometimes relatively small – listening or viewing audiences. This includes content in languages other than English, content targeted at recent migrants and refugees and, content for and reflecting Australians of culturally and linguistically diverse (CALD) backgrounds.
- This specialist content includes information, news and entertainment in languages other than English (LOTE) for television and radio; online content in English and LOTE including settlement guides; Australian content reflecting on and representing the experiences of Australia’s multicultural society; music and other diverse cultural content for television and radio; and information for older Australians from CALD backgrounds
- No other organisations are obliged to provide this type of content. That no other Australian free-to-air or subscription service elects to provide this type of content indicates that there is limited commercial gain from providing such services. This suggests that SBS is at a commercial *disadvantage* because of its Charter and community obligations to provide multilingual and multicultural programming.
- As FECCA understands it, programs in English and LOTE, are available for all Australian broadcasters to purchase. SBS are subject to the same market conditions as other broadcasters including commercial broadcasters. Commercial broadcasters could, if they chose to, develop or purchase content similar to that that which is provided by SBS.
- SBS has a range of specialised product offerings in addition to broadcasting services which build upon its expertise in catering to the needs of CALD Australians and communities. These products also reflect SBS’s commitment to improving diversity and inclusion and cultural competency across the population more broadly. These products and services are not replicated by other broadcasters because they are specifically aligned with the SBS Charter, SBS’s expertise and audience profile needs.
- No other competitor consistently develops products aimed at the needs of migrant, CALD, refugee and (non-English speaking background) NESB Australians as SBS does. SBS has been successful in capturing a significant share of the market as a result of these offerings because those products and services are directly meeting needs of communities who are not traditional target markets for other commercial broadcasters. This is particularly evident in SBS’s in-language offerings and its commercial activities with regards translation and subtitling.
- It is FECCA’s view that SBS’s success in identifying non-traditional programming which has proved popular with audiences (for example *The Handmaid’s Tale*; *If You are the One*; *The Good Fight*, *SBS PopAsia*) reflects the SBS organisation’s own diversity and

regular community consultation. This has enabled SBS to develop a deep understanding of Australia's diverse audience – leading to good decisions in the selection of content that are also adherent to its Charter. This content also allows the organisation to attract more audiences to its channels and platforms thereby engaging a broader cross section of multicultural Australia with other CALD and LOTE program offerings.

- It is FECCA's view that – in general – SBS's programming in English and LOTE meets its obligations under the SBS Charter.
- It is FECCA's view that SBS should be congratulated on its commercial successes, as it enables SBS to develop and offer high quality content for minority audiences such as settlement guides; locally made content reflecting Australia's diversity and the issues of relevance to CALD communities; programming in LOTE; and content for older Australians of CALD backgrounds.

Question 9

What is the differential impact of regulation on commercial and national broadcasters, and is there evidence of consequent adverse impacts on competition and outcomes?

- SBS must accord with extensive formal regulatory and reporting requirements. SBS is also uniquely accountable to its audience through organisations representing CALD communities. This continues to ensure that SBS delivers high quality content, consistent with its Charter.
- As is appropriate, these regulatory and reporting obligations ensure that SBS is driven by its Charter rather than commercial goals. FECCA would surmise that this level of accountability places SBS at a competitive *disadvantage* when compared with Australia's commercial broadcasters.
- It is acknowledged that SBS receives public funding to provide content that meets its Charter and public service obligations. Similarly, commercial broadcasters – including subscription-based television providers – receive subsidies to broadcast sports that are not commercially viable, (e.g. women's sports, niche sports and sports that command high levels of community participation) and the broadcast of which is deemed to be in the interests of the community. In comparison to SBS, however, commercial broadcasters have more liberal regimes regulating other content and advertising.
- Other reforms have also given commercial broadcasters increasing leverage, for example, the package of assistance offered through the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017* which includes licence fee reductions and the liberalisation of media ownership laws. FECCA commends SBS for adhering to its Charter and for meeting the needs and aspirations of Australia's CALD communities through its programming, despite limited resources and an increasingly liberalised and competitive environment.
- With regards formal regulation, FECCA understands that SBS is subject to at least the same levels of scrutiny as other broadcasters including:
 - The development of SBS's Codes of Practice and editorial guidelines and the lodging of those Codes with the Australian Communications and Media Authority;
 - The development of SBS Editorial Guidelines to sit within the Codes of Practice;
 - Independent complaints handling procedures investigated independently by the SBS Ombudsman, and capacity of the Australian Communications and Media Authority to review the findings of the SBS Ombudsman;
 - Legislation overseeing governance, information management, employment including equal opportunity and Aboriginal and Torres Strait Islander employment, and work safety; and
 - Annual reporting including financial and operational, ACMA Closed Captioning Obligations, under the Special Broadcasting Service Act 1991 and other Parliamentary reporting requirements including Senate Estimates.

- Outside of formal regulation and reporting, SBS is subject to additional layers of scrutiny when compared to the commercial networks. This scrutiny is provided by stakeholders representing the needs of CALD communities and their expectations of SBS. Examples include:
 1. **The Community Advisory Committee (CAC):** created by the *Special Broadcasting Service (SBS) Act 1991*, the CAC provides the SBS Board with community opinion, advice, and feedback based on community needs and perspectives. It meets regularly throughout the year and provides a cross-section of viewpoints which reflects the diversity of CALD communities. The Terms of Reference for the Committee emphasise the importance of the advice provided by the CAC. Members of the CAC are selected primarily on the basis that they have ‘an understanding of Australia’s multicultural society’ and are therefore best placed to scrutinise SBS programming, marketing, products, policies and partnerships. Through the CAC, CALD communities have direct access to SBS decision makers.
 2. **The Federation of Ethnic Communities’ Councils of Australia (FECCA) and its constituent members:** FECCA (the author of this submission) is the peak national body representing Australians of CALD backgrounds. FECCA and its members communicate regularly with different sections of SBS to share community feedback on programs and content and to link SBS with a diverse range of CALD communities. SBS also works closely with FECCA to better understand the needs of older CALD Australians for whom SBS radio, and to a lesser extent television, is a critical resource for information, news and entertainment. SBS works closely with FECCA to ensure that its digital products cater to the needs of CALD communities but particularly new arrivals, young people and older people. FECCA assists SBS to host regular consumer forums around the country to better inform their decision making, policies, product creation, and content delivery. SBS sends a strong contingent of representatives to the biennial national FECCA conference which brings together CALD Australian consumers, community organisations, sector stakeholders and policy makers. This is a key opportunity for SBS to receive feedback, opinion and advice.
 3. **Australian consumers from CALD backgrounds:** SBS receives feedback directly from Australian consumers of CALD backgrounds through many channels. SBS hosts forums and events around the country on a regular basis, consumers provide their feedback via SBS social media platforms, via email, and via the SBS feedback, complaints and contact forms on the website. Consumers demonstrate their support or displeasure with SBS by engaging or not engaging with SBS products. Consumers provide input to SBS decisions, policies and products via the CAC as mentioned above.
 4. **The commercial ethnic media sector and the not-for-profit ethnic community broadcasting sector:** Ethnic and multicultural media are key channel for feedback and commentary and provide an important check on the quality and performance of the SBS.
 5. **SBS reviews:** SBS regularly conducts reviews whereby it seeks public and consumer feedback to better tailor its product offerings and services. In 2016 it completed a large public consultation on its broad radio services and it has recently completed a review into the languages offered through digital-only radio broadcasting, resulting in the inclusion of five new languages to cater to the shifting consumer needs and demographics.

- The SBS Charter has guided and shaped SBS into a broadcaster that is loved, supported and cherished by Australians of non-English speaking and culturally diverse backgrounds, and the broader Australian audience. Most importantly, the Charter has ensured that SBS provides key content and services that support and protect Australia's multicultural society and that promote inclusion, tolerance and acceptance of diversity.
- FECCA believes that SBS adheres to its Charter obligations on the basis of feedback received from our constituency that:
 - CALD communities across Australia consistently express gratitude and satisfaction with SBS's products and services.
 - CALD communities see themselves reflected in SBS services and catered to by SBS product offerings.
 - SBS is the only service provider to target the needs and interests of CALD Australians.
 - SBS provides a platform to celebrate multiculturalism and diversity – a critical tool in aiding social cohesion.
- FECCA supports the SBS recommendation to the recent Australian Content Review which called for a fully-funded Australian content quota for SBS, to deliver more SBS Charter aligned content to the community. FECCA supports this recommendation because SBS has demonstrated over many years that it is deeply committed to representing Australia's diverse communities in high quality, locally made content which is reflective of our nation's population. However, any policy to increase Australian content must not impede efforts by SBS and other public broadcasters to provide diverse and high-quality content sourced overseas to meet the needs and interests of Australia's multicultural community.
- It is FECCA's understanding that SBS has onerous restrictions upon its capacity to advertise with regards the amount of advertising they can currently broadcast (SBS is limited to 5 minutes per hour while commercial networks are limited to 13 to 16 minutes per hour) and the ease of adjusting the amount of advertising that SBS can broadcast (SBS require legislative change whereas as commercial industry limits are set out in industry codes which must be registered by the regulator). This places SBS at a competitive *disadvantage*.
- SBS face additional restrictions with regards its advertising content because of the scrutiny by and responsibility to its primary audience. The nature of its audience – for example non-English speaking background viewers – means that SBS has a restricted market from which it can source advertising revenue. This places SBS at a competitive *disadvantage*.

Question 10

Is the reporting and accountability by the national broadcasters on their best endeavours to observe competitive neutrality adequate?

- While FECCA believes that public funding of SBS is critical to its capacity to provide content to fulfil its Charter and public service obligations, FECCA recognises the importance of competitive neutrality.
- FECCA takes the issue of competitive neutrality seriously not least because any unfair competitive advantage held by SBS would impact commercial and not-for-profit multicultural service providers including the ethnic media, translating and interpreting businesses and other cultural services. To ensure the continuance of a vibrant marketplace for cultural and linguistic services, it is in the interests of FECCA and our constituency that SBS accords with its obligations relating to competitive neutrality.
- Specifically on the issue of competitive neutrality, FECCA understands that any competitor of SBS can make complaints about competitive neutrality to the Australian Government Competitive Neutrality Complaints Office.
- More broadly, is FECCA's position that SBS faces rigorous oversight from both formal regulation and the organisations that represent its diverse audience. This oversight ensures it is held accountable on its observation of competitive neutrality as well as its adherence with its Charter obligations.
- FECCA therefore believes that the reporting and accountability of SBS on their best endeavours to observe competitive neutrality is adequate.

Question 11

Are you aware of any specific instances where the ABC or SBS may have received any other competitive advantage, due to their public ownership, to the detriment of a private competitor?

- As discussed in Question 10, FECCA takes the issue of competitive neutrality seriously not least because any unfair competitive advantage held by SBS would impact commercial and not-for-profit multicultural service providers including the ethnic media, translating and interpreting businesses and other cultural services. To ensure the continuance of a vibrant marketplace for cultural and linguistic services, it is in the interests of FECCA and our constituency that SBS accords with its obligations relating to competitive neutrality.
- It is FECCA's position that SBS faces rigorous oversight from both formal regulation and the organisations that represent its diverse audience. This oversight ensures it is held accountable on its observation of competitive neutrality as well as its adherence with its Charter obligations.
- FECCA has not received any feedback from our constituency that would suggest SBS exerts or holds any unfair competitive advantage.
- SBS's language services such as translations and subtitling add value to CALD communities through high quality language outputs which enhance equitable access to a range of products and services for CALD communities. These services enhance the professionalism of the translation sector through the provision of a national profile and high-quality projects.
- SBS's commercial offerings contribute to the underwriting of a range of SBS community outreach work – activities which add immeasurable value to CALD communities and which could not be replicated by any other broadcaster (public or commercial) because community work is reliant on trust and long-term relationships built upon nuanced understandings of community needs and priorities. SBS's Charter drives this relationship building and it is their commitment to CALD Australia that drives their commercial offerings – not the need to be commercially competitive with rival organisations.
- It is FECCA's view that SBS should be congratulated on its commercial successes, as it enables SBS to develop and offer high quality content for minority audiences such as settlement guides; locally made content reflecting Australia's diversity and the issues of relevance to CALD communities; programming in LOTE; and content for older Australians of CALD backgrounds.

Question 12

The SBS Charter requires it to take into account the activities of the ABC and community television on radio and television. In the context of the competitive neutrality principles how in your view, is the SBS complying with this requirement? From your perspective does it adequately cover the activities of the SBS?

- The ABC Charter states that the ABC should reflect the multicultural character of the Australian community and Australia's cultural diversity in the delivery of its services – as it should. This does not make it a specialist multicultural broadcaster. It makes it a broadcaster that is relevant to the broad Australian community.
- SBS is a *multicultural* broadcaster. Its principle function is to provide multilingual and multicultural radio, television and digital media services. The ABC does not do this, has never done this, and is not required to do this in its Charter. No other broadcasters, including the community broadcasting sector, has the capacity to do this in a committed, consistent, reliable, accessible and transparent way.
- As a result, no other Australian broadcasters can meet the needs of FECCA's constituency and the broader Australian community with regards the retention and development of language and other cultural skills and inform, educate and entertain Australians in their preferred language.
- The diversity of the SBS organisation – made necessary by its principle function of providing multilingual and multicultural broadcasting – means that no other broadcaster can as quickly adapt and reflect the changing nature of Australian society.
- FECCA believes that the ABC and all broadcasting services within Australia should be doing more to promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people and to increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society. This does not in any way lessen the importance of SBS's role as a multicultural broadcaster.

Question 13

From your perspective do the national broadcasters seek a balance between competing in the market and complementing the market? Is that balance the same for traditional broadcasting and for new digital platforms?

- FECCA regularly consults with CALD communities across Australia on issues of importance and the consistent feedback from a broad cross-section of language groups, geographic locations and age groups, is that SBS provides a valuable, cherished and unique set of products which speak to CALD communities in ways which no other broadcaster (public or commercial) attempts or achieves. It is our view, therefore, that SBS seeks and achieves a balance between competing in the market and complementing the market for traditional broadcasting and new digital platforms.
- SBS has built up a relationship of trust with CALD communities over 40 years and FECCA's constituents look to SBS as a reliable source of news and culture in English and in language which is tailored to an Australian audience. SBS has recognised that CALD communities' needs and interaction methods have shifted over time and have taken care to provide services in a range of formats. CALD Australian audiences expect SBS content to be provided on-demand and digitally as well as through traditional broadcast channels. SBS's on-demand and digital products cater to these needs and reflect and strengthen social cohesion in a modern, connected, multicultural Australia. Many Australians of CALD background prefer on demand programming as a method of consuming SBS content. We welcome the current SBS project to develop an online search capacity of content by language.
- SBS has used digital platforms creatively to deliver specific products and services unavailable elsewhere including its settlement guides in multiple languages, local Australian news in multiple languages, radio, music and other content.
- SBS must provide high quality content through sophisticated digital platforms in order to compete with in-language news and entertainment delivered to Australian digitally from overseas-owned broadcasters. It is essential to good settlement outcomes and social cohesion that SBS's locally-broadcast content, in LOTE and appropriate to a diverse Australian audience is available from SBS through high-quality digital platforms.