

**SUBMISSION TO THE DEPARTMENT OF INFRASTRUCTURE, TRANSPORT, REGIONAL
DEVELOPMENT, COMMUNICATIONS AND THE ARTS**

ANTI-SIPHONING REVIEW PROPOSALS PAPER

SEPTEMBER 2023

KEY POINTS

- The Special Broadcasting Service (**SBS**) welcomes the opportunity to comment on the Review of the Anti-Siphoning Review Proposals Paper (**the Paper**).
- SBS welcomes the Government's recommitment to the policy principles underlying the scheme, and its willingness to explore proposals to improve the effectiveness of the scheme.
- The scheme remains a relevant intervention and an important form of public interest regulation. There is an opportunity to implement reforms which truly benefit Australian audiences, and this should be the principle that guides decision-making and regulatory design.
- SBS's position on the proposals is informed by the strong alignment between SBS's public interest purpose in contributing to social cohesion, and the continuing potential for the scheme to maximise free coverage of sporting events which bring diverse Australian communities together to explore a shared sense of national identity.
- SBS supports a combination of Model 3 ('Free-to-air first') and List Option 3 ('The Expanded List'), as the optimum combination of measures to modernise the scheme and enhance its potential audience benefit.
- Model 3 most appropriately reflects the contemporary environment of consumer behaviour and service choice, and will maximise audiences' access to reliable, free and ubiquitous coverage of listed events. It would best accommodate further audience shifts to online viewing, potentially avoiding the need for regulation to be revisited in the near future.
- Model 2 also provides some modernisation of the scheme and is supported by SBS only if Model 3 is not preferred by Government.
- Model 1 is not supported by SBS, given its potential to reduce free and equitable access to coverage of sporting events – a result that is inconsistent with the enduring and positive policy objectives underlying the scheme.
- List Option 3 offers the greatest potential for audience benefit, given the inclusive approach taken to women's and paralympic sport, and the restoration of the complete FIFA World Cup tournament to the list (men's and women's). Given the strong interest from Australian audiences and the success of Australian competitors, the Tour de France and Tour de France Femmes should be added to this expanded list.

I. ABOUT SBS

As Australia's most diverse broadcaster, 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. SBS is also the home of the National Indigenous Television (**NITV**) service.

SBS is a modern, multiplatform media organisation with a free-to-air TV portfolio spanning six distinctive channels in SBS, NITV, SBS VICELAND, SBS Food, SBS World Movies and SBS WorldWatch; an extensive audio network providing over 60 communities with radio and podcast services in their own language; and an innovative digital offering, including SBS On Demand, available to audiences anytime and anywhere.

II. RECOMMENDATION

SBS supports a combination of Model 3 ('Free-to-air first') and List Option 3 ('The Expanded List'), as the optimum combination of measures to modernise the scheme and enhance its potential audience benefit.

III. INTRODUCTION

SBS welcomes the Preliminary Findings set out in the paper, which reaffirm the ongoing relevance of the policy intent underlying the anti-siphoning scheme and the continuing need for regulatory intervention to achieve these policy objectives.

As outlined in SBS's December 2022 submission to the Review of the Anti-Siphoning Scheme Consultation Paper, the scheme continues to have the potential to maximise free coverage of sporting events in ways which bring diverse Australian communities together to explore a shared sense of national identity. These public interest principles have not reduced in relevance, and the recent experiences associated with the 2023 FIFA Women's World Cup provide a contemporary demonstration of the potential for sport to enhance social cohesion and promote a shared understanding of national identity.

We note that a number of other submitters supported the ongoing relevance of these policy objectives, which is also supported by the Free TV Australia survey quoted in the Paper, as well as quoted viewing data.¹ As noted in the Paper, support for these policy principles extends across a range of stakeholders, including Free TV Australia, Foxtel, Optus, sports bodies and academics.²

We therefore welcome the Government's Preliminary Finding 1 – that the core objective of the anti-siphoning scheme remains relevant, and SBS supports the proposed addition of this objective to overarching objectives of the *Broadcasting Services Act 1992* (**BSA**) (as proposed on p 17 of the Paper).

Given the significant changes in the media industry and the market for sports rights, it is timely to consider the ongoing efficacy and increasing importance of the anti-siphoning scheme. In particular, the increasingly dominant position and purchasing power of SVOD platforms necessitates an examination of their place in the sporting coverage ecosystem.

As set out in SBS's December 2022 submission to the Review of the Anti-Siphoning Scheme Consultation Paper, the emergence of a wide range of paid media platforms which are not covered by the scheme, gives rise to a potential for the scheme's impact and efficacy to be significantly diluted. Access to these services is subject not only to a subscription fee, but also the cost of broadband access.

SBS therefore supports the Government's Preliminary Finding 2 – that the scheme has an ongoing role but needs to be broadened to incorporate online services.

¹ For example, Free TV's 2021 survey found that 69% of respondents agreed that giving all Australians access to coverage of major sporting events is in the public interest. In 2022, 67% of Australian adults had watched sport in the preceding six months, with 42% watching live sport in the preceding week (Proposals Paper p 16).

² Proposals Paper, pp 15-16

This submission provides an assessment of the various options put forward by the Government to implement these preliminary findings, guided by the principle of maximising audience benefit.

IV. POTENTIAL MODELS FOR REFORMING THE ANTI-SIPHONING SCHEME

Preferred model – Model 3

"A significant extension of the current scheme to prevent the acquisition of any type of right to provide coverage of an iconic sporting event to Australians by a content service provider until a free-to-air broadcaster has both a right to televise the event on a broadcasting service and a right to provide coverage of the event on a content service, or the event is automatically delisted."³

SBS supports the adoption of Model 3: 'Free-to-air first', as the most effective means of amplifying the audience benefit of the anti-siphoning scheme and fulfilling the scheme's underlying policy objectives.

Model 3 maintains the foundational architecture of the scheme, which has proven to be effective over time, but also extends the scheme to reflect the modern realities of consumer behaviour and service provision.

The key critical upsides of Model 3 are the extension of the restriction on the acquisition of rights to new online platforms, and the extension of the protection of rights to also include online rights.

The extension of the restriction on the acquisition of rights to 'content services' is, as SBS set out in its earlier submission, urgently necessary to ensure the policy objectives of the anti-siphoning scheme are not subverted by the migration of important sporting events behind online paywalls.

As set out in the earlier Consultation Paper, and in the current Proposals Paper, subscription-based online content services are now an established component of the media offering available to audiences, and these services are increasingly looking towards exclusive acquisition of sporting events to drive subscriptions and market share. The anti-siphoning scheme is currently drafted without reference to these platforms, creating a regulatory gap.

SBS welcomes the Government's consideration of ways to address this regulatory gap, and supports the proposed mechanism in the Proposals Paper to repeal and replace paragraph 10(1)(e) of Schedule 2 to the BSA, and to insert a new set of rules governing the acquisition of sports rights. As the paper notes, given Model 3 is based on the existing scheme, it offers a less complicated option in terms of implementation and administration, than Model 1.

SBS also supports the proposed definition of 'content service' as an appropriate approach to drawing in content services provided over the internet to end-users, and in so doing, extending the operation of the scheme.

Model 3 also offers a new approach to meeting the underlying policy objectives of the scheme through the extension of protection to include the rights to provide coverage on online content services. As set out in the Proposals Paper, the acquisition restriction would prohibit a content service provider from acquiring a right to provide coverage of listed events unless a free-to-air broadcaster has acquired the rights for broadcast **and** the rights for online coverage.

SBS welcomes this proposal as an appropriate reflection of the evolution of audience viewing habits and an effective way in which to maximise the public policy benefits of the scheme. If the scheme intends to afford free coverage of listed events to viewers, then the scheme should rightly also reflect the changed ways in which Australian audiences consume free content.

³ Proposals Paper, p 6

Free content is no longer exclusively available on the broadcast platform, and audiences are increasingly expecting to be able to access free-to-air services on other platforms, with an increasing number of Australian households not installing an aerial and/or accessing services via broadband.⁴

As an additional benefit, free-to-air broadcaster coverage of listed sporting events on their Broadcaster Video on Demand (**BVOD**) offerings can extend beyond that which is possible on the broadcast platform, offering additional choice, simultaneous coverage and extended hours of coverage.

SBS's recent experience with coverage of the 2022 FIFA Men's World Cup demonstrated a more rapid than expected audience migration to the free online SBS On Demand platform for coverage of games. On average there were 900k active watchers on SBS On Demand on most days, with over 1 million on days with Australian games.⁵

Model 3 would maximise online coverage of important events without pushing audiences to paid platforms. In this sense, Model 3 offers a clear pathway to equitable modernisation of the scheme.

As noted in the Proposals Paper, this model "preferences and prioritises" free-to-air broadcasters as the appropriate services to effect the scheme's policy objectives. SBS supports this approach, given the ongoing ubiquity of free-to-air television services, their free-to-access nature, and the reliability and robustness of the broadcasting platform.

Importantly, free-to-air television services are also unique in terms of their provision of free online content services, in an environment crowded with subscription-based services. These factors mean that the free-to-air platform remains the most appropriate and effective means of delivering on the policy objectives of maximising free audience access to priority sporting and cultural events.

The potential upside for consumers weighs heavily in favour of this model, which "would provide a high likelihood of live and free coverage [of] listed events on both broadcasting services and online" and "mitigate[s] the risk of audiences being subject to direct costs to access this content."⁶

Whilst there are ongoing concerns regarding cost, ubiquity and performance of online services (indeed these are mitigating considerations against Model 1 – as outlined below), the important factor in Model 3, that distinguishes it from Model 1, is that broadcast rights continue to be protected by the scheme (in effect, a 'safety net').

As with the current scheme, Model 3 would not prevent other media providers from offering coverage of events, as long as the acquisition restriction has been complied with, or the event has been automatically or manually delisted. The current scheme has operated to enable subscription television to acquire extensive coverage rights to a wide range of listed events and this capability remains under the proposed Model 3 framework.

Whilst there are some potential impacts of Model 3 in terms of competitive outcomes and the extension of regulatory scope, these are outweighed by the effectiveness of Model 3 in ensuring continued access to free coverage of important events for all Australians.

As outlined below, implementation of Model 3 should be accompanied by the implementation of List Option 3, in order to fully maximise the audience benefit of the anti-siphoning scheme.

⁴ 2022 Television Consumer Survey – Prepared by the Social Research Centre for the Department of Infrastructure, Transport, Regional Development, Communications and the Arts – February 2023

⁵ Source: SBS internal data.

⁶ Proposals Paper, p 45

Model 2

"An extension of the current scheme to prevent the acquisition of any type of right to provide coverage of an iconic sporting event to Australians by a content service provider until a free-to-air broadcaster has a right to televise the event on a broadcasting service, or the event is automatically delisted."⁷

If Model 3 was not preferred by Government, SBS supports Model 2 as a fallback option to ensure that the anti-siphoning scheme is modernised to prevent the migration of listed events behind online paywalls.

Model 2 is centred around the extension of the restriction on rights acquisition to online content services, but lacks Model 3's protection of free access to online coverage. Given the ongoing transition of free-to-air broadcast audiences to BVOD services, it is likely that adoption of Model 2 would necessitate a further review of the scheme in 2 or 3 years' time.

Nevertheless, for the reasons set out above in the discussion of Model 3 (which would incorporate online platforms into the scope of the scheme, as well as protecting online rights) Model 2 (which would also extend the current scheme to online platforms, without protecting online rights) would offer tangible benefits and would overall deliver positive outcomes for Australian viewers.

As outlined below, it is important that Model 2 would be accompanied by the implementation of List Option 3 (the most expansive list), to ensure maximum audience benefit from this regulatory intervention.

Model 1

"A new scheme (to replace the current scheme) that would impose availability and coverage obligations on all content services (online, broadcast or any other media service) that provide coverage of iconic sporting events to Australian audiences."⁸

Model 1 is not supported as it would push coverage to online platforms and de-emphasise the ubiquitous and freely available free-to-air broadcast platform.

The potential barriers to access associated with an online-focussed scheme are well set out in the Proposals Paper and include questions over population coverage of fixed and mobile networks, lower take-up of home internet connections among particular groups, and the direct and indirect costs associated with an internet connection. As noted in the Paper, there are disproportionate access and cost impacts for Australians on lower incomes.

These barriers do not exist in relation to the free-to-air (broadcast) platform.

As noted in the Paper, there remain questions regarding the suitability of online platforms for providing live coverage of events to millions of Australians simultaneously. These concerns relate to network speed and capacity, and pose potential impacts on audiences' ability to enjoy uninterrupted high-definition coverage of sporting events. This was most notably demonstrated during the 2018 FIFA World Cup.

Of further concern is the argued need for Model 1 to be accompanied by a vastly reduced list of protected events.

When combined, Model 1 and List Option 1 would appear to risk greatly reducing free and equitable access to important sporting events, and would be inconsistent with the foundational policy objectives of the scheme, and the Paper's preliminary findings that those objectives remain relevant.

⁷ Proposals Paper, p 6

⁸ Proposals Paper, p 6

V. POTENTIAL OPTIONS FOR REFORMING THE ANTI-SIPHONING LIST

Preferred model – Model 3

“A significant increase compared with the current list, including in relation to women's events and Para-sports.”⁹

SBS supports List Model 3: The expanded list. This list, which features the addition of a substantial amount of women's sport, the Paralympics and the restoration of all FIFA World Cup matches to the list, is most consistent with SBS's earlier submissions, and would result in the best outcome for Australian audiences.

SBS welcomes the impact the expanded list would have in broadening the construction of nationally important and culturally significant events, through the more inclusive approach to the matches that involve a senior Australian representative team. The consistent and inclusive treatment of events regardless of the gender or disability status of competitors, aligns strongly with social equity principles and is supported by SBS.

The unprecedented levels of audience interest in the recent 2023 FIFA Women's World Cup demonstrate a burgeoning mainstream interest in elite women's sport and should provide assurance that such events are of national significance and cultural importance to Australians.

The audience response to the 2022 FIFA Men's World Cup – or the “World Game” as it is colloquially known – provides strong evidence of the Australian public's affinity with this event, and reinforces its status as nationally important and culturally significant:

- Audiences tuned into 80 million Total Consumption Hours for Linear broadcast and BVOD combined, with Linear bringing in 52 million and BVOD totalling 28 million consumption hours (about 3 times the target).¹⁰
- Linear broadcast coverage achieved 9 million reach across the tournament. And BVOD reach was 4.5 million (demonstrating that audience behaviours have changed significantly).¹¹
- On average there were 900k active watchers on SBS On Demand on most days, with over 1 million on days with Australian games.
- The highest rating game was Australia v Tunisia, with a Total TV audience of 1.732 m followed by Australia v Argentina with 1.713m. The Final between Argentina and France attracted a total TV audience of 1.012m.¹²

Whilst there may be impacts for sports bodies and subscription content providers arising from the increased scope of the list, the scheme already includes mechanisms for mitigating those impacts via the manual and automatic delisting provisions.

In addition to those sports included in List Option 3, SBS also supports the inclusion of the Tour de France and Tour de France Femmes, given the strong participation of Australian riders¹³ in these events and their popularity with, and importance to, Australian audiences. For the 2023 race, Tour

⁹ Proposals Paper, p 7

¹⁰ Linear Source: OzTAM, Regional TAM, 20/11/22 – 31/12/22, C28 includes all events with the word 'FIFA' for the period selected
BVOD Source: OzTAM VPM data, 20/11/22 – 31/12/22, Activity: Live +VOD, includes all events* (classic, Highlights, extended highlights, mini-matches, Full replay) with the word 'FIFA' for the period selected

¹¹ Source: OzTAM (Metro, VPM), Regional TAM, Linear reach based on 1 min, BVOD reach based on 15 secs.

¹² Linear Source: OzTAM, Regional TAM, C28, TTL PPL | BVOD Source: OzTAM, TTL PPL, 20/11/2022 – 17/01/2023

¹³ 12 men and 12 women from Australia participated in the 2023 race editions.

de France live stages reached an average audience of 174,000 people (on linear),¹⁴ and 9.9 million chapter views (SBS On Demand + Tour Tracker App).¹⁵

Other list options

If List Option 3 were not preferred by Government, SBS supports the adoption of List Option 2, which offers additional support for women's and Paralympic sport. However, this option would present a missed opportunity to ensure more equivalent protection for women's sport, and would continue to leave the FIFA Men's World Cup and FIFA Women's World Cup vulnerable to exclusive acquisition by a subscription platform (noting some limited listing would apply to the Final and Australian team games).

As noted above, List Option 1 is not supported, given the substantive reduction in the amount of sporting events to be protected, and its connection to Reform Model 1, which is also not supported.

VI. CONCLUSION

SBS is pleased that the Government has reaffirmed the importance of maximising free access to nationally significant and culturally important events, and that the ongoing need for regulatory intervention has been recognised.

Reform Model 3, and List Option 3, when combined, offer a very strong model of reform that would modernise the scheme, maximise free access to coverage, and in so doing, greatly enhance the potential audience benefit of the scheme.

This should be the guiding principle for the Government in assessing all proposals – that is, consideration of which combination of options would most benefit Australian viewers.

SBS looks forward to working with Government to ensure effective implementation of the preferred regulatory model.

¹⁴ Source - OzTAM (5 City Metro, BVOD - Kibana) & Regional TAM (Combined Agg Markets) | Tour De France (Live Stages 1-21) | 01/07/2023 - 31/07/2023 vs 01/07/2022 - 31/07/2022 | Avg Audience + BVOD Audience (Total Audience) | Consolidated 7 Data, Live BVOD, VOD to 7 Days

¹⁵ Source - Adobe Analytics | 01/07/2023 - 31/07/2023 | Tour De France Content (Live & VOD) | Total Video Chapter Views | Consolidated 7 Data