NINE ENTERTAINMENT Co.

Submission

SENATE ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Inquiry into the Broadcasting Legislation Amendment (Media Reform) Bill 2016

23 March 2016

1. Introduction

Thank you for the opportunity to respond to the Inquiry into the *Broadcasting Legislation Amendment (Media Reform) Bill 2016*.

The proposed amendments to repeal the 'two out of three' and '75% reach' rules are important steps in reform, however they overlook the central issue of ensuring a competitive and healthy Free to Air (FTA) television broadcasting sector in Australia.

The media landscape has fundamentally changed. Today consumers have more choice for their content. Increasingly they are sourcing content from a plethora of international and domestic operators delivering subscription video-on-demand, online entertainment portals and mobile applications. Advertisers, therefore, also have a proliferating choice of platforms to connect with audiences of this content. This increase in choice for consumers and advertisers has made Australian media a far more competitive and less profitable market than it was in the past.

In this rich digital media environment Australians still demand relevant, high-quality Australian content and they demand it for **free**. As a custodian of **free** quality Australian content Nine Entertainment Co. take this responsibility very seriously, but are concerned that should we continue to be restrained by irrelevant and restrictive regulations the first thing to suffer will be high-quality Australian content and many associated jobs in the sector.

In this submission Nine Entertainment Co. submits:

- Conditional support for the proposed changes to the '75% reach' and 'two out of three' rules as a path to reform. However, they should not impose additional regulation with regard to local content;
- **Licence fee relief is the immediate and pressing issue for Nine Entertainment Co. and for ongoing investment in the Australian production industry;** and
- Real media reform must address the role of the public broadcasters in meeting public policy objectives for today's media landscape.

2. About Nine Entertainment Co.

Nine Entertainment Co. is a leading media and entertainment group focused on the delivery of premium video content to all Australians. Nine Entertainment Co. delivers its content in multiple ways, through FTA television broadcasting, video-on-demand, digital channels and online.

Nine Entertainment Co. turns over $1.6 billion annually, investing over $700 million a year in production and programming with a significant portion of this expenditure on quality Australian content. We broadcast over 7,000 hours a year of Australian programming and are a significant employer in the Australian media sector, employing over 2,300 staff across 18 sites.

Our assets include the Nine Network, Mi9, a 50 per cent interest in Stan as well as interests in Sky News Australia , Pedestrian TV, and ASX-listed financial services company Yellow Brick Road.

Our FTA broadcasting network, which includes Channels Nine, 9GO!, 9HD, 9GEM and 9Life, is a leading television network across Australia with operations in Sydney, Melbourne, Brisbane, Perth, Darwin and Adelaide as well as in regional Northern New South Wales. The other regional markets in Australia are serviced by Nine's affiliates.

3. Technology is making the current policy framework redundant

True media reform is now a pressing issue. Current cable and ADSL 2+ technologies deliver the speeds sufficient for quality video content to be streamed to Australian homes. This is evidenced by the dramatic uptake of services including Netflix, which since its introduction into the Australian market in March 2015 is estimated to have just over 1 million[1] subscribers. Furthermore, the ubiquity of the NBN will further accelerate the adoption and use of content sources like Netflix and YouTube.

The NBN is set to pass 9.1 million premises and business by FY18[2]. The access advantages once offered by the FTA broadcasters' spectrum holdings (and justification for substantial licence fees) has been greatly eroded.

Nine Entertainment Co. continues to build value through high-quality, relevant Australian content which sets us apart from the telecommunications companies and multinational over the top (OTT) deliverers of content. This, however, is an expensive and at times cost-prohibitive investment. The onerous 4.5% licence fee is hampering ongoing investment in this sector.

Wireless technology is also offering an option for content delivery. 5G, the next generation of wireless technology, is already delivering trial speeds 30 to 40 times quicker than that of the current 4G technology. By way of example, the two-hour movie *Guardians of the Galaxy* downloaded over 3G takes 26 hours; downloaded over 4G takes 6 minutes; and downloaded over 5G will take 3.6 secs[3].

New ways of thinking and new innovative platforms are paramount in this new media landscape. Nine Entertainment Co. is equipping its business for the new innovation frontier of cross-platform content consumption where today's digital natives will be tomorrow's decision makers and a key advertising demographic. This requires ongoing

[1] http://www.theaustralian.com.au/business/media/netflix-growth-slows-in-australia/news-story/77bb4348d23e59a0bcaf43b0b575ec5b
[2] NBN Corporate Plan page 12.
[3] http://www.cnet.com/au/news/how-5g-will-push-a-supercharged-network-to-your-phone-home-and-car/

investment in digital platforms, data, new content innovations and new advertising models, requiring significant capital, infrastructure and resourcing.

To invest in the new platforms and technologies, which will allow us to compete with large multinationals, requires the unfair and onerous broadcast licence fee to be removed. There is no longer any reason for the asymmetry that has been created by a tax which was imposed at a time where the profit and level of influence of the commercial FTA television broadcasters provided a justification for the fee.

4. Licence fee relief will drive increased investment in Australian content and innovation.

Licence fees were originally introduced with the *Television Licence Fees Act 1964* and set at 9% of broadcasters' gross advertising revenue.[4] In 2013[5], changes were enacted in order to reduce the fee to 4.5% of broadcasters' gross advertising revenue[6], in recognition of the significant pressures faced by the commercial broadcasting sector as a result of emerging and convergent technology, and an increasingly challenging operating environment.[7]

The fee was initially introduced when the right to use spectrum was the basis for above-average profits and justified an additional levy. In effect, the television licence fee was an industry-specific 'broadcast tax' on commercial FTA broadcasters which reflected access to a scarce and profitable delivery platform. However, this justification is no longer valid, with Channel Nine's EBITDA margin effectively halving over the past 15 years.

Nine Entertainment Co. currently pays 4.5% of its television revenue as a licence fee. In FY15 this broadcast tax amounted to $51 million. **An immediate and crucial first step in the reform process is the abolition of the onerous and restrictive licence fees placed on the commercial free-to-air licences.** This will drive fairer competition and more investment, leading to more Australian jobs in the Australian television and production sector.

Multinational content companies including Netflix, YouTube and Apple have no licence fees, and no regulatory requirements placed on them for access to a network, as we do for our spectrum. In fact the Government's national broadband network will give them a free ride in the delivery of their content to more and more Australian households over the coming decade. Further, these multinational businesses do not invest in the Australian production industry. They do not hire Australian journalists, Australian talent or Australian production staff.

[4] Television Licence Fees Act 1964, s6
[5] Following temporary 50% rebates granted in 2011-12, and 2012-13 pursuant to the Television Licence Fees Regulations 1990.
[6] Following 50% rebates granted in 2011-12, and 2012-13.
[7] Explanatory Memorandum to the Television Licence Fees Amendment Bill 2013.

The commercial FTA industry is a large employer in the media sector, directly employing 7,200 people[8]. According to the 2015 Screen Australia Report, *Economic contribution of the film and television industry in Australia*, FTA television contributes $4.7 billion of direct value for the Australian production industry.

The Screen Australia Report also found the FTA television industry contributed $1.5 billion in direct value added economic contribution, the biggest of any category analysed for the report. Further, this value added contribution creates over 6,600 FTE jobs in Australia.[9] It is therefore critical to the ongoing health of the Australian production industry to have a competitive and healthy commercial FTA television sector.

Without the investment of the FTA television sector there would be significant contraction in the local production industry as more capital goes offshore to the unregulated multinational players.

Australian TV Broadcasting Regulation and Investment.

Note: Lighter green indicates fewer obligations

We are not seeking a handout or free ride; we acknowledge our responsibility in providing Australian content for access to the spectrum. We are, however, seeking a level playing field in relation to taxes and fees. Nine Entertainment Co. accepts our responsibility, like every company in Australia, to pay corporate and payroll tax. But carrying an additional tax that is not carried by our competitors is simply **unjust and unfair** and ultimately detrimental to the Australian creative industries.

[8] THE VALUE OF FREE TV: The contribution of commercial free-to-air television to the Australian economy. May 2015. page 6.
[9] http://www.screenassociation.com.au/uploads/reports/ASA_Economic_Contribution_Report.pdf page 16.

5. 75% should not come at the cost of further regulation

We, like the Government, believe the 75% rule is a redundant regulation. But while we support its removal, this should not come at the cost of more regulation. This will further restrict commercial FTA television broadcasters in an already over-regulated sector. Nine Entertainment Co. supports the need for reform in the media sector but it needs to be timely in order to alleviate regulatory pressures which are continuing to widen the disparity between incumbent media players and new entrants.

The 75% rule prohibits a person or entity from being in a position to exercise control of commercial television broadcasting licences with combined licence areas exceeding 75% of the Australian population.

Commercial FTA television broadcasters are the only media businesses prevented from reaching more than 75% of the population. Currently the ABC, SBS, commercial radio, Telstra, Foxtel, News Limited, Fairfax, Google, You Tube, Facebook, Twitter, Apple TV and many others all benefit from a national reach unencumbered by regulation.

The 75% reach rule effectively allows control of a commercial broadcasting licence in each mainland capital city of Australia, but does not permit a metropolitan television network to also control a national regional television network.

This rule is proposed to be repealed in the **Broadcasting Legislation Amendment (Media Reform) Bill 2016.** If there is a change in ownership under this new reform, this will be identified as a 'trigger event'. Six months after the change in control (trigger event) the new controlling entity will have to implement increased quotas to deliver content of local significance.

For each licence area with a current quota of 720 this will rise to 900 points for each six-week period (with a weekly minimum of 120 points). For those markets not already subject to existing local content requirements, six months after a trigger event, there will be an introduction of local content requirements of 360 points per six-week period, with a minimum of 45 points each week. The new requirement will apply to markets including Mildura/Sunraysia TV1; Griffith and Murrumbidgee Irrigation Area TV1; Darwin TV1; and Mt Gambier/South East TV1

The Bill introduces further incentives for focused local news content by providing that each minute of local news programming that depicts persons, people or things in the relevant local area will be allocated three points. Other local news content that otherwise relates directly to the local area contributes two points. Licensees can also obtain points for news and other material relating to the *licence area* (1 point for each). However, as with the existing local content quota regime, there is a cap on points accumulated based on the licence area (not more than 50%).

While repealing of the '75% reach' rule is logical, Nine Entertainment Co. is greatly concerned by the additional local content requirements that only become enforceable at a trigger event such as a change in control of ownership.

It is curious that the additional quotas only come into effect where there is a change of ownership, therefore suggesting that no genuine market failure exists and therefore no public policy requirement for these additional quotas.

Further, Nine Entertainment Co. submits that local content in rural and remote Australia should be the remit of the ABC. According to the ABC's recent submission to the *Senate Standing Committee Inquiry into Broadcasting, Online Content and Live Production to Rural and Regional Australia*, the ABC has, "the largest network of specialist rural reporters in the world".[10] This includes 35 reporters based in 35 regional offices, along with six national reporters based in various locations.[11] Alongside the ABC's rural reporters, ABC Regional has a total of 88 news reporters working in 48 regional locations.[12]

6. Change in ownership through 'two out of three' on its own does not provide meaningful reform.

With the diversity and growth in content coming from multiple sources, the arguments for the protection of diversity become less relevant.

The 'two out of three' rule prohibits a person controlling more than two out of three specified media platforms – commercial television, commercial radio broadcasting or newspaper associated with the same licence area – in a commercial radio licence area.

There are a number of mechanisms that provide a safety net for diversity in the media market and the ACCC is well placed to protect the public policy objective of diversity, as is the 4/5 voices test.

Nine Entertainment Co. believes that changes to the 'two out of three' rule alone does not produce a meaningful step in the media reform process unless it is passed with the abolition of the '75% reach' rule.

7. Flexibility required in 55 per cent Australian content quota

Nine Entertainment Co. recognises the importance of free Australian content in developing a sense of Australian identity, character and cultural diversity. The Australian content quotas require commercial FTA television licensees to broadcast an annual minimum transmission quota of 55 per cent Australian programming between 6.00am and midnight on the primary channel plus additional obligations across the

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[10] ABC submission on the importance of media in regional Australia, page 7.
[11] Ibid
[12] [12] ABC submission on the importance of media in regional Australia, page 8.

multi-channels. We are further restricted with sub-quotas for Australian (adult) drama, documentary and children's programs.

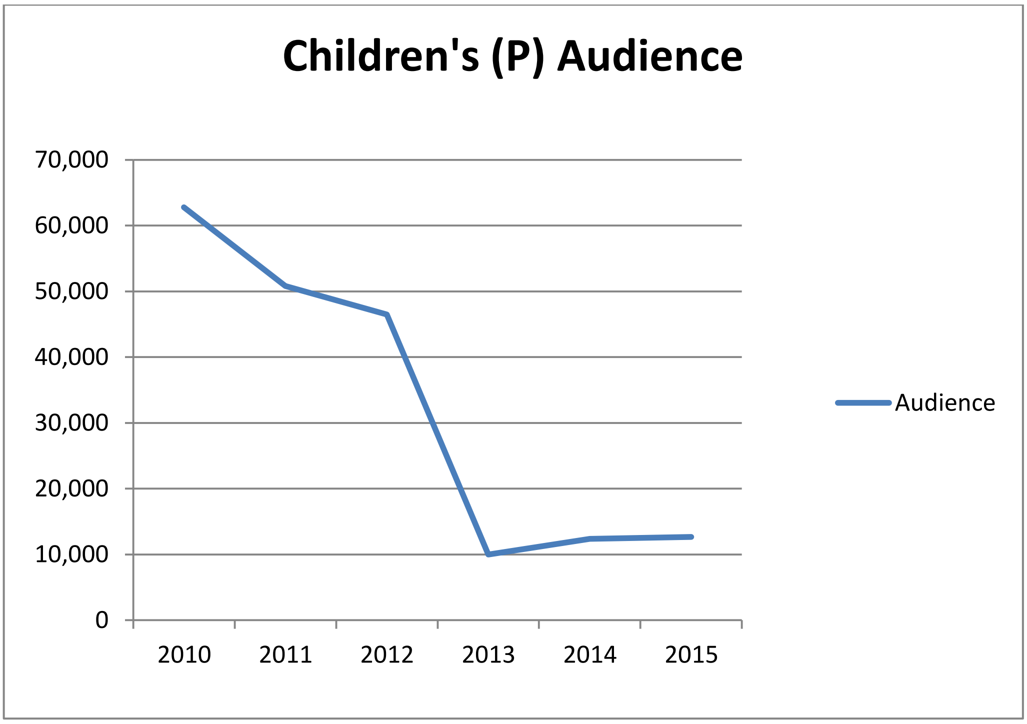
There are a suite of regulatory restrictions on Nine Entertainment Co.'s ability to allocate its capital to the most commercial and audience-responsive programs – our multinational and unregulated competitors enjoy complete freedom from such restrictions.

Nine Entertainment Co. seeks more flexibility within the allocation of its 55% quota. For example, commercial FTA television broadcasters are required to deliver children's content quotas, which are made up of:

- 260 hours of C classified programs within designated C bands for children under 14 years of age;
- 130 hours for preschool children – within designated P bands; and
- 25 hours of first-release Australian Children's drama in the C band in any year and at least 96 hours in each succeeding period of three years.

Nine Entertainment Co. submits that this regulation no longer is meeting its public policy objectives, with some of our P and C television shows attracting an audience of fewer than 2000 viewers. This demonstrates that commercial FTA television is no longer a destination for this audience. (see: Figure 1.)

Figure 1. Nine Entertainment Co. Aggregated 5 City Metro Children's P Audience



Children's content is being addressed by the ABC via its ABC2 and ABC3 channels. Furthermore, the availability of children's shows online is driving more of the pre-teen demographic to YouTube and other online entertainment portals.

Nine Entertainment Co. invests millions of dollars each year to comply with the Children's content quota. This is important capital that should be redirected into more innovative Australian content.

8. The role of public broadcasting

Nine Entertainment Co. welcomes the current public debate on the role of the ABC and SBS. True reform of the media sector requires a detailed and forensic look at the role of the public broadcasters within this sector. Public broadcasters are an integral and ongoing part of media public policy, and therefore their role in today's media landscape needs to be seriously examined to ensure they are efficient and addressing a relevant and contemporary role in the Australian media sector.

Questions must be raised with regard to further investment by public broadcasters in multi-channeling and an already over-serviced digital market. These taxpayer investments are driving up programming and production costs, and at times driving up their own costs when they are bidding against each other for the same content.[13]

Nine Entertainment Co. estimates our television production costs are up to 30 per cent more efficient than those of the ABC. This is at a time where cost management is imperative to ensure Nine Entertainment Co. continues to innovate to remain competitive.

Nine Entertainment Co. is maintaining an ongoing cost-management program across all controllable expenditure, targeting below-CPI cost growth. As part of this program the company has increased capital investment in Broadcast Technologies and Sales Inventory Systems to streamline processes and improve efficiencies. At no time has cost management been more important. This should also be a top priority for the public broadcasters.

ABC and SBS were developed to address market failures of diversity and multicultural content. The ABC, with an annual budget of over $1.1 billion, is charged to deliver 'broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of the Australian community'.[14]

ABC and SBS should be broadcasters of 'market failure'. For the ABC to argue that they are not, as they did in a recent Government submission, brings into question the criteria against which they apply their programming decisions.

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[13] Mark Scott, Address National press club, 24 February 2016
[14] http://about.abc.net.au/how-the-abc-is-run/what-guides-us/legislative-framework/

> *Despite claims to the contrary, the ABC has never been, and nor will it ever be, a 'market failure broadcaster.' It was created alongside commercial broadcasters in the 1930s to provide a range of quality programming and to maximise diversity within the Australian media sector. The ABC has and continues to fulfil its Charter obligations, while maintaining its relevance to a diverse audience, despite a raft of changes within the media sector.*[15]

The Special Broadcasting Service Corporation (SBS) was established in 1978, initially launched in response to initiatives to provide ethnic-specific broadcasting content. According to the *National Audit Commission Report* released in February/March 2014, SBS has annual expenses of around $0.4 billion, of which $0.3 billion is provided by government (SBS, 2013).

SBS's charter requires it to:

> *provide multilingual and multicultural radio, television and digital media services that inform, educate and entertain all Australians, and, in doing so, reflect Australia's multicultural society.*

As noted in the National Commission of Audit paper: "Multicultural, ethnic, educational, children's and informative content can be produced through other means, such as increased producer incentives, tax concessions and community service obligations, and do not necessarily require the existence of a sole-purpose public broadcaster such as the SBS."

The charters of the ABC and SBS do not set any specific operational requirements, such as hours of content produced, required quotas of Australian content, or channels to be broadcast. Instead, in practice the ABC and SBS are free to use the funding they receive from the government as they see fit.

However, the Government is able to direct Nine Entertainment Co. as to the proportions of Australian content that should be broadcast. In contrast, the public broadcasters do not have to meet any required quotas. The regulatory imbalance between the commercial networks and the ABC and SBS has meant that the public broadcasters are freer to deal with the challenges of media convergence.

As noted above, the charters of the ABC and SBS need resetting for the contemporary media landscape. The proliferation of media alternatives is eroding the traditional arguments for public broadcasters. Market failures in diversity and the production of multicultural content are no longer at play, with technological advances markedly increasing accessibility of Australian, international and multilingual content. In this way, the need for government intervention has been greatly reduced by technology and commercial imperatives.

[15] ABC submission to House of Representatives Standing Committee on Communications and the Arts, Inquiry into the importance of public and commercial broadcasting, online content and local production to regional and rural Australia. page 17.

9. Conclusion

We applaud any attempt to reform the Australian media sector to make it more competitive. However, we are at a digital crossroads where reform must be forward thinking and far more advanced than any previous reforms that have gone before it.

We appeal to the Government to:

- Abolish unfair licence fees to allow us to compete fairly and lead to more investment in Australian content and jobs;
- Pass both reform measures together and without any additional quotas on the industry;
- Examine the role of the public broadcasters; and
- Be visionary with reform to enable a level playing field into the future.

The government needs to level the playing field, which will facilitate the commercial FTA television broadcasting sector to equip itself to be relevant and grow in an increasingly diverse content market. Before it's too late for our industry and the Australian content production sector.

It is in the public interest to keep commercial FTA competitive and strong to ensure Australians' continuing access to **free quality Australian programming**.

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