



13 April 2015

Ms Christine McDonald
Committee Secretary
Environment and Communications Legislation Committee

By email to ec.sen@aph.gov.au

Dear Ms McDonald,

Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015

Foxtel welcomes the opportunity to comment on the *Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015* (the **Bill**), referred to the Environment and Communications Legislation Committee for inquiry on 26 March 2015.

We appreciate that the Bill has been presented in the context of the Government's program to repair the Federal Budget—and that, to this end, the Bill is aimed at reducing the dependence of SBS on government funding by increasing revenue from advertising and product placement.

However, Foxtel strongly opposes the proposed changes because they would inequitably divert advertising and product placement investments that might otherwise be made in unsubsidised commercial media sectors such as subscription television (STV).

Foxtel believes that national broadcasters which receive very significant base funding from Government should not be permitted to win additional advertising revenue at the expense of commercial operators. Where their base funding is reduced national broadcasters should seek to find efficiencies within existing operations rather than divert revenue from private sector business that rely on advertising.

Advertising limits

While retaining the same overall limit of 120 minutes of advertising in any 24 hour period, the Bill proposes to increase the current limit of five minutes of advertising in any one broadcast hour to 10 minutes.

It is anticipated that SBS may schedule up to 10 minutes of advertising during higher rating programmes (usually in the evening prime time or in major sporting events) to capitalise on advertising revenue, while scheduling less advertising in other hours so that the 120 minute daily cap is not exceeded.

The Explanatory Memorandum (EM) notes that the proposals:

...may result in a minor increase in competition for television advertising among the broadcasters

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and that

[e]ven assuming minimal growth in the television advertising market and SBS's revenue growth is at the expense of other broadcasters, the proposal is unlikely to result in a significant loss in revenue to any individual network.¹

Foxtel is aware that there has been debate about the potential financial impact of the amendments on the commercial free-to-air television sector. While Foxtel does not express a view on these calculations, we note that it is evident that no consideration has been given to the impact of the amendments on the STV sector.²

While Foxtel derives the majority of its revenues from customer subscriptions, a sizeable portion of our revenues is made up of advertising sales. MCN (the Multi Channel Network), a joint venture between Foxtel and FOX SPORTS, places advertising, among other places, on 67 television channel brands, 127 websites, 74 m-sites/optimised mobile sites, 56 apps and four IPTV services.

We therefore stand to be directly affected by the provisions in the Bill which would permit SBS to double the amount of advertising that may be broadcast in any hour. SBS is highly likely to increase advertising content in programmes that target high-value consumer/viewer 'eyeballs' allowing it to extract greater yield and greater volumes of advertising, therefore directly impacting MCN's and Foxtel's revenue potential. Furthermore, to the extent that Foxtel broadcasts specialist programming to niche audiences that are also targeted by SBS this effect could be even more pronounced.

Product placement

Passage of the Bill would confirm that SBS is permitted to earn revenue through the use of product placement. Candidates for product placement include the food and sports genres. Foxtel broadcasts a range of channels dedicated to these very genres and so stands to be directly affected where commercial partners may seek to include their products in SBS programs at the expense of Foxtel programs.

As with increased spot advertising, the likely transfer of product placement revenue from STV and commercial television to SBS will mean that the private sector is being asked to subsidise a Government broadcaster. We do not think that this is appropriate and urge the Committee to recommend that the Bill not be passed.

Yours sincerely,

Richard Freudenstein
Chief Executive Officer

¹ Explanatory Memorandum, *Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015*, page 8.

² For example, at page 9, the Explanatory Memorandum notes that 'it is not certain that any increase in SBS advertising spend will draw away revenue that would have otherwise gone to other commercial free-to-air broadcasters'. There is no reference to STV.