



ANNEXURE

FETCH TV PTY LTD

**Submission to Department of Infrastructure, Transport, Regional
Development, Communications and the Arts**

Prominence framework for connected TV devices Proposals Paper

27 February 2023

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1. Introduction

Fetch TV Pty Ltd (**Fetch TV**) welcomes the opportunity to provide feedback on the design of a prominence framework in response to the Proposals paper “Prominence framework for connected TV devices” dated December 2022. As set out in the joint submission made by Fetch TV and Telstra in October 2022 to the Future of Broadcasting Working Group, Fetch TV generally is supportive of the overarching policy intention that gave rise to the Government’s commitment to legislate a prominence framework.

2. About Fetch TV

Fetch TV partners with leading Internet Service Providers and major retailers to provide subscribers with a box based, internet delivered entertainment aggregation platform for viewing on TV and mobile devices (“Fetch”, or the “Fetch service”). The Fetch product proposition is based on ‘All your entertainment, easy’, with all design and development occurring in-house in Australia. The Fetch service provides seamless integrated access to Free-to-Air TV channels and BVOD Apps, subscription channels, FAST channels, YouTube, and SVOD. The service also offers TV and Movie Stores with over 10,000 titles from all the major studios, and UFC pay-per-view. Following an investment by Telstra Group Limited in 2022, Fetch TV operates as a joint venture between Telstra (51.4%) and Astro Holdings. Fetch TV currently services 600,000 households, and planned migration to Fetch of the 800,000 Telstra TV base is scheduled to commence from mid-2023. ISP partners include Telstra, TPG / iiNet, Optus, Vocus, and Aussie Broadband. Retail distribution partners include JB Hi-Fi, Harvey Norman, The Good Guys and more. SVOD apps include Netflix, Disney+, Prime Video, Paramount Plus, Stan, Hayu, and more. [Fetch.com.au](https://www.fetch.com.au)

3. Executive Summary

Fetch TV earns no revenue directly from FTA broadcasters via the Fetch service. Nonetheless, the Fetch service has always featured the FTA channels and Apps prominently, and done so without any regulatory or direct commercial incentive to do so. In fact, Fetch TV has introduced Virtual Playlist channels to provide additional EPG listing to promote content on the BVOD Apps. Providing prominence is rational because viewer demand for the FTA content is so high. Fetch TV will continue to provide prominence without any legal obligation to do so. Fetch TV considers that:

- A. no regulatory framework is necessarily required because of the existing strong incentives within Australia for platforms which provide access to FTA channels to give them prominence to satisfy consumer demand;
- B. if a prominence framework is mandated, then it must be carefully calibrated to ensure that such framework does not
 - compromise the consumer experience,
 - stifle innovation, or

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- limit or extinguish commercial opportunities.

We have in this submission chosen to broadly address matters which we see as being of overall strategic significance to the issue of prominence, with special relevance to Fetch TV's position as a platform aggregator and an historically strong and committed supporter of Australian content, local content providers and the Free-to-Air (FTA) broadcasters (both commercial and non-commercial) in particular.

We see the matters we consider to be of key importance in approaching the questions of Prominence with special reference to local FTA broadcasters to be:

- A. The principle of reciprocity.
- B. The formalisation of access to IP feeds of FTA channels.
- C. Avoidance of overly prescriptive regulatory outcomes.

4. **Background: Fetch TV's continuing engagement with FTA broadcasters**

Fetch TV has a long history of working with FTA broadcasters and also ensuring local content is readily available through our respective platforms and devices through a variety of access options, including but not limited to:

- hardware capabilities in the Fetch set-top boxes (STB) to receive and access digital terrestrial free-to-air channels (via a dedicated tuner), the electronic programming guide and ability to pause, rewind and record free-to-air content;
- applications (Apps) that can be accessed on the device to stream and view local content, including all current FTA broadcast video on demand applications (ABC iView, 9Now, 7+, 10play and SBS on Demand) ("**BVOD Apps**"), and other third-party content providers that include or produce locally sourced content, such as Stan.
- software capabilities to surface and editorialise local content to end-users by promoting content directly on the user interface or home screen, integration of the provider catalogues into an aggregated search feature supported through text and voice input, ensuring ease-of-discoverability that extends beyond application availability
- As noted, Fetch TV provides at no cost to the FTA broadcasters, a virtual playlist channel, programmed by the FTA broadcasters. A virtual listing within the EPG for the purpose of surfacing the FTA's on demand content within the EPG to ensure viewers have visibility of the on demand content when making a viewing decision. This bridges the gap between

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traditional linear and VOD, increasing the promotion of the on-demand content in a relevant and contextual manner.

Our experience in working with content providers and broadcasters for over a decade, coupled with our own experience as an OEM manufacturer of set top boxes and as the developer and designer of our own user interface gives us a unique insight into a range of issues affecting prominence.

5. The Principle of Reciprocity

Any mandated prominence to be accorded to FTA channels has to be coupled with a number of reciprocal actions from the FTA broadcasters. The reciprocity is required in the key areas of provision of BVOD Apps and associated metadata.

5.1 BVOD Apps

The principle of reciprocity in connection with prominence as it affects the BVOD Apps provided by the commercial FTA broadcasters, the ABC and SBS is simple: the FTA broadcasters must be required to make their BVOD Apps available to the platforms if bound by any prominence regulations.

Fetch TV supports a “must carry” obligation in relation to BVOD Apps on connected TVs and STBs and would not oppose an obligation to accord the BVOD Apps a degree of prominence.

Generally, the principle should be that a “must carry” obligation brings with it reciprocal obligations. This must include completeness of the content range as well as access to the app itself (meaning that the content must be ubiquitously available on all platforms without hold backs or exclusions for certain platform providers).

5.2 Metadata

Fetch TV is of the view that there cannot be a legislated “must carry” principle for the FTA channels if, at the same time, the FTA broadcaster require platforms and providers to licence the metadata associated with the FTA Channels for population of the EPG and search at substantial cost.

A platform such as Fetch TV makes no money from the carriage of the FTA Channels but must nonetheless incur significant fees to the FTA broadcasters EPG provider (currently ACNielsen).

Thus, the principle should be that a “must carry” obligation in respect of the FTA channels needs to be coupled with an obligation on the FTA broadcasters to make available all EPG and program metadata for no fee.

A key part of the rich viewer viewing experience and the according of prominence to FTA Channels is via EPG and listing information (including via integrated search) on platforms.

The viewer discovery of and navigation to FTA programming is reliant upon the EPG and

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integrated universal search.

If platforms such as Fetch TV are to be legally required to accord prominence to FTA Channels, and to enhance the prominence via EPG and search, the FTA broadcasters must be reciprocally obligated to provide the platform with access, for no fee, to a range of meta data relating to the programmes incorporated in the FTA Channels. The data to be provided should include

- EPG data
- Other listing data/metadata including information as to programme genre, dates of broadcast, series, episodes, classification, etc

The data/metadata to be provided by the FTA broadcasters should be high quality (that is accurate, provides a depth of information), provided in a way that is consistent and timely, and on par with that which the FTA's provide on their own services. This will allow the platform to service and promote FTA content in ways that enhance prominence – e.g., Search results by show name, actors, directors, genre, etc.

6. Retransmission/IP Feeds – FTA Channels

Fetch TV's view is that it is important, as part of an overall prominence review

- to clarify retransmission rights; and
- mandate provision of IP feeds for FTA Channels for display out of app.

Clarification of retransmission rights coupled with mandatory provision of "out of app" IP feeds for FTA Channels for provision in an EPG would enhance the ability to make available good quality reception by the consumer of FTA channels, particularly in those households which have no FTA aerial to receive the channels or are in an area of poor or no reception (blackspot).

To assist in general availability of FTA Channels across Australia, FTA Broadcasts should make the IP feeds of all their channels available outside of their BVOD Apps and Platforms such as Fetch TV should have the right to take the IP feed for all FTA Channels and make those feeds available for no fee via the EPG and providing the FTA channels with the assigned channel number

We do not necessarily object to an obligation that make the viewer login to the FTA broadcaster's BVOD App as a precondition to being given access to the IP feed outside the BVOD app (that is, via the EPG).

If the IP feeds are not required to be made available as a matter of regulation, then platforms should have the right to re-transmit FTA terrestrial channels (convert to IP), using the VAST broadcast areas, without incurring any retransmission royalties.

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7. Limits to overly prescriptive regulation

The third strategic principle which Fetch TV considers should guide the prominence considerations is the importance of ensuring that regulation does not stifle innovation, commercial opportunity or viewer choice.

Some of the matters to be considered are set out below.

7.1 Maintain Viewer choice

Fetch TV's position is that a number of steps can be taken to increase/maintain prominence of FTA Channels whilst still ensuring that the viewer experience on devices may be configured and customised – at the instigation of the viewer- to reflect personal preferences and engagement:

- All free to air terrestrial channels should be available on relevant devices on the numbers to which those channels have been assigned and the channels should be readily discoverable using a search.
- Viewers should be able to continue to use functionality on a television interface which permits customisation – a viewer should be able to “hide” or “favourite” FTA channels according to their personal preferences.
- Viewers should be permitted to re-arrange FTA channels within their “favourites” sections, that is customisable re-sequencing should be permissible.
- In the case where a FTA channel is being re-transmitted (e.g., Foxtel retransmission via satellite) then the FTA channel number should be the same, for consistency, when re-transmitted.

7.2 “No Worse Off”

Fetch TV would be supportive of a general approach that ensures that the FTA content is “no worse” off with regard to the establishment of a rule set for navigation in the context of any prominence framework.

We consider it extremely important that platforms such as Fetch TV have the flexibility to present menu structures that customise the user experience, based on functionality such as user settings, policy rules, algorithms, etc. Such functionality may, for example, prioritise “favored channels” in the EPG, present Apps in rank order based on active subscription / sign in, frequency of use, last viewed, etc.

We oppose any requirement that extends legislative proposals to any device capable of displaying streaming content (Proposal 6.1). The difficulties of mandating prominence in respect of plethora of devices including mobiles and tablets and laptops having multiple uses many of which are entirely unrelated to television viewing is manifest and we respectfully adopt the

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matters raised by Telstra in its submission.

7.3 Promotion

Fetch TV is strongly opposed to any principle that would obligate a platform to provide any particular form of promotion to FTA Channels at no cost.

The reason for such position is quite simply based in fairness – no platform or streaming service in Australia can advertise on FTA Channels without paying their usual advertising fees.

We would accept a rule that requires promotion of FTA Channels in consideration of payment of a platform's standard advertising fee.

In any event, we are of the view that a commercial outcome around mutual promotion is one that is conducive to contra agreements (as well as standard advertising fee structures).

Notwithstanding the principle, it's important to point out that practically, Fetch TV as a platform provides a substantial, even aggressive, level of promotion for no fee to the FTA **broadcaster**.

8. Conclusion

In conclusion, Fetch TV takes the opportunity to reiterate certain of the issues raised in the joint paper with Telstra to the Working Group in October 2022.

Reciprocity must be the guiding principle in respect of prominence if legislated, such that the according of prominence to FTA broadcasters must carry with it an obligation on the part of the FTA Broadcaster to provide a degree of equivalence, without which the legislated prominence substantially disadvantages the Platform. Accordingly, the provision of data for EPG feeds and to populate BVOD Apps must be provided for no fee. Promotion of FTA Channels can be provided only on a commercial basis.

We also urge caution with regard to the mandating of prominence having regard to the unintended consequences that could flow from such regulation, including the possibility of

- Stifling of innovation and agility of development (discussed above);
- reduction of hardware and device options in Australia (if the prominence obligations make the provision of certain hardware and devices uncommercial to maintain in the territory); and
- certain third-party content providers withdrawing their content from the market because mandated prominence for FTA channels affects viability.

We would also continue to advocate strongly for a sensible transition period for the introduction of a legislated prominence framework. There needs to be a transition period of several years.

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Fetch TV continues to be a strong supporter and advocate of FTA viewing in Australia and to that end, point to the extensive functionality that exists within our service giving a high degree of prominence to FTA content. As previously noted in our joint submission with Telstra, this position arises from the fact that the content is already highly sought after by subscribers. We continue to be of the view that the issues are complex and we welcome the opportunity to be part of the ongoing discussion.

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