

ABC Alumni submission

Inquiry into the Competitive Neutrality of the National Broadcasters

22 June 2018

Section 1: Overview

This submission represents sets out the response of ABC Alumni, a national community organisation comprising former employees and associates of the Australian Broadcasting Corporation (**ABC**), to the Inquiry into the Competitive Neutrality of the National Broadcasters (the **Inquiry**).

ABC Alumni advocates for the ABC's role as an independent and impartial public broadcaster and digital content maker, in the face of unwarranted political and commercial criticism. ABC Alumni is grateful for the opportunity to provide a submission to the Inquiry which reflects the extensive experience and valuable insights of former staff.

This submission contains a general response to the issues raised by the Terms of Reference for the Inquiry, as well as responses by ABC Alumni in its capacity as an interested stakeholder to questions 8 to 14. Legal advice on competition law and competitive neutrality has been incorporated in this submission.

In summary, ABC Alumni submits that:

1. There is no evidence that the ABC has taken undue advantage of its government ownership.
2. Adopting the test prescribed by the Harper Review, the ABC does not enjoy a 'net competitive advantage' simply as a result of government ownership. The ABC operates on a more efficient and cost-effective basis than commercial media organisations, while being subject to the highest and most rigorously policed standards of any media organisation in Australia.
3. The ABC Charter imposes obligations on the ABC to provide innovative and comprehensive broadcasting services and to provide digital media services pursuant to the *Australian Broadcasting Corporation Act 1983* (Cth). In delivering innovative and high-quality services across a range of platforms—including through its on-air, iView and online news services, as well as through traditional news and current affairs, regional, radio, and special interest broadcasting—the ABC continues to acquit these obligations in a pro-competitive manner and in the public interest.

ABC Alumni consents to this submission being published online, in whole or part. ABC Alumni would be keen to assist panel members of the Inquiry should they require more detail on any aspect of the submission.

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Section 2: Context to submission

- 1 The ABC holds a unique position in the Australian media landscape.
- 2 As Australia's national broadcaster, the ABC has provided distinctive, high-quality content—including accurate, independent and impartial journalism—to Australians for more than 85 years.

Functions and innovation

- 3 In keeping with the ABC's obligations under the ABC Charter (as enshrined in the *Australian Broadcasting Corporation Act 1983* (Cth)), the ABC is required to perform functions including providing Australians with innovative and comprehensive broadcasting services of a high standard and providing digital media services.
- 4 The ABC has a proud history of performing these functions with distinction. The ABC's record of innovation since the turn of the century alone includes pioneering video-on-demand and catch-up TV services through ABC iView, developing market-leading online news and podcasting, and expanded regional programming.

No 'unfair advantage'

- 5 The Inquiry seeks to consider 'how the national broadcasters operate in modern media context and whether the ways they compete with the private sector are appropriate,' applying principles of competitive neutrality. Those principles, including as articulated in the Harper Review, invite consideration of whether a government entity obtains undue competitive advantage as a result of their government ownership when competing with the private sector, to the detriment of competitive outcomes.
- 6 In keeping with its obligations under the ABC Charter, the ABC performs numerous functions which commercial operators have broadly failed to provide or have withdrawn from providing (such as rural and regional coverage, arts, science and special-interest programming). As noted by Glenn Dyer and Bernard Keane (Crikey, 7 February 2014):

... [m]uch of the ABC's programming is content commercial broadcasters don't do at all, like high-quality children's programming (particularly, programs that aren't

vehicles for toy advertising) and regional radio. The commercial radio sector has abandoned regional communities over the last 20 years, cutting jobs, networking programming and dumping news bulletins. The ABC has picked up the slack -- under former managing director Jonathan Shier it opened up several new ABC Local Radio studios in regional centres, so it now has well over 50 Local Radio services, all of which also provide emergency information services during times of natural disaster...

- 7 However, this Inquiry appears to be concerned in particular with those areas in which the ABC provides services in competition with commercial broadcasters and media organisations.
- 8 ABC Alumni submits that the ABC performs its functions in an efficient, innovative and pro-competitive way, on a competitively neutral basis, and in the public interest. These submissions are elaborated upon below.

No bar to the ABC acting as a successful organisation

- 9 The Commonwealth Competitive Neutrality Policy Statement (1996) (**CNP**) notes:

Competitive neutrality does not imply that government businesses cannot be successful in competition with private businesses. Government businesses can achieve success as a result of their own merits and intrinsic strengths, but not as a consequence of unfair advantages flowing from government ownership.
- 10 Other than in respect of the fact that the ABC is not a 'Government business' for the purposes of the CNP (see further below), this statement accurately represents the position of the ABC. The ABC has achieved remarkable success, and occupies a position as one of Australia's most trusted institutions, on its merits—providing innovative, cost-effective and important journalism and content to Australians. It has done so despite repeated and significant cost-cutting and despite being subject to the highest and most rigorously policed and enforced standards of any media organisation in Australia.

No detriment to competitive outcomes

- 11 Even were competitive neutrality an appropriate lens through which to analyse the ABC's relationship with commercial media organisations (see further below), and regardless of the fact that the ABC does not obtain or take undue advantage of its position as a government-owned entity, the ABC's discharge of its functions as an innovative multi-platform media organisation has historically resulted in pro-competitive, rather than anti-competitive, outcomes.

- 12 While the ABC is a significant media organisation, the ABC does not exercise substantial market power within the dynamic Australian market for broadcast and online media services. It does not possess dominant market share, function as a barrier to entry, or—crucially—have the ability to significantly affect prices and profit margins for commercial media organisations.
- 13 This is reflected in the scale and speed of recent developments in the changing Australian digital media scene. Consider the new entrants in the digital space: the New York Times' opening of a significant bureau in Sydney (and its reliance on its subscription model), and the preparedness of CBS to take on the debt-laden Ten network seeing growth potential. The digital material offered by the ABC or the SBS has not deterred The Guardian from investing heavily in Australian operations, nor The Daily Mail, nor BuzzFeed and the Huffington Post—all of which face competition with local start-ups including The New Daily, Crikey and so forth.¹
- 14 Contrary to the apparent criticism that the ABC's development of its online news platform has the effect of undermining commercial online media, analyses of the ABC's degree of market share indicates the falsity of the proposition. In this regard, ABC Alumni note the conclusions of Professor Axel Bruns dated 27 May 2017, "The ABC is not siphoning audiences from Fairfax" (at <<https://theconversation.com/the-abc-is-not-siphoning-audiences-from-fairfax-78329>>), that the major Fairfax [and News Corp] sites outperform the ABC in terms of reader traffic, and the public broadcaster is in fact a net source of visits to the SMH and The Age.
- 15 In ABC Alumni's view, endorsing recent comments by Justin Milne (Chair of the ABC), the most immediate competitive threat to Australian commercial media arises not from the ABC or SBS but international digital platforms, such as Facebook, Amazon, Apple, Netflix and Google, which possess mega-billion-dollar production budgets and global scale-economies that have upended business models around the world.
- 16 The ABC's services are highly substitutable. To the extent that the ABC's online, video-on-demand and other services attract consumers who might otherwise access a substitutable commercial media product, the degree of public loyalty towards and

¹ The ABC's development of its online service provision has been criticised on ideological grounds as being an inappropriate forum for public expenditure—most notably by two people associated with the Institute of Public Affairs calling for the sale of the national broadcaster, and last weekend's policy motion at the Liberal Party federal council meeting in Sydney demanding the "privatisation" of the ABC. This submission does not generally seek to enter into that terrain, noting that such criticisms appear to represent a partisan ideological strain of argument against public funding at odds with both public and political reality and separate to any reasoned analysis of the performance by the ABC of its statutory functions. This submission endorses the observations of Michelle Guthrie in the above-referenced speech at the Melbourne Press Club, 19 June 2018: "What price do you put on public trust in an independent, commercial-free news organisation," Guthrie asked, "at a time of fragmentation and disruption? As the Prime Minister himself noted at the Liberal Party council meeting, it is difficult to establish the facts in a disputed media landscape full of echo chambers and fake news outlets."

trust in the ABC's services reflects not an unfair advantage arising from a beneficial position as a government-owned entity, but the quality of the ABC's acquittal of the higher standards *imposed upon it* as a government-owned entity—with resulting value to consumers of Australian media.

- 17 The ABC's capacity to detrimentally impact other participants in the Australian media landscape should be critically examined in the above context.

Pro-competitive and pro-consumer outcomes of ABC innovation

- 18 However, the Inquiry should also note the pro-competitive benefits of the historic performance by the ABC of its Charter obligation to 'innovate'. The ABC's efforts in executing this obligation has resulted in pro-competitive and pro-consumer outcomes, without being facilitated by any 'undue advantage'.

- 19 We offer three illustrative examples:

- (a) **ABC iView.** When the ABC launched its video-on-demand and catch-up service iView in 2008, there was no impediment—budgetary, regulatory or commercial—to commercial broadcasters having already done so. Instead, the ABC's product innovation demonstrated that a market existed in Australia for video-on-demand; commercial broadcasters belatedly followed in developing their own services. The ABC's market development has positively contributed to the range of consumer platforms by which media can be consumed, and the convenience with which consumers can do so;
- (b) **Podcasting.** ABC Radio National was an early Australian market entrant into podcasting, at a time when both the underlying technology and consumer acceptance of the format was much less well developed. The ABC's investment in podcasting laid significant foundations for the growth of the format in Australia;
- (c) **24-hour news.** The ABC's establishment of Australia's only free-to-air 24-hour television news channel represented a natural extension (when digital spectrum became available) of the ABC's long standing commitment to broadcasting news "as it happens".

- 20 All of these innovations were initially funded, not through extra government monies, but through internal ABC efficiencies achieved by re-prioritisation, staff reduction and introducing new technology. Making more with less has been the ABC and SBS watchword for decades; as Managing Director Michelle Guthrie notes, the ABC which has endured regular, significant budget cuts since 1976 is highly efficient, "Thirty years ago, the ABC had five platforms and 6,000 people working around the

country. Today, Your ABC has two-thirds the number of people operating six times the number of platforms and services with half the real per capita funding".

- 21 This figure is no less remarkable given international comparisons. Australia's per capita funding for public broadcasting is 34 per cent lower than the average of such funding in comparable democracies, including the UK. In fact, while the ABC serves a population one-third the size of the UK, the ABC does so with a budget one-eighth that of the BBC. More than 90 per cent of the ABC's budget is spent on content and delivery—and in ABC News, almost 96 per cent of the annual budget of \$202.4 million is spent on journalism and production.
- 22 Lastly, any discussion about the discharge of the ABC's functions in the Australian media landscape should take account of the statutory functions of the ABC, prescribed in the ABC Charter. The ABC performs these statutory functions with clear benefits to consumers, in an efficient and cost-effective manner, and with regard to the effect of those services on the commercial and community sectors.
- 23 The Inquiry should be hesitant to make findings in relation to the competitive effect of the ABC's activities on the media landscape without regard to the statutory obligations incumbent upon to the ABC to perform those essential functions.

Balancing of competitive neutrality principles and costs

- 24 The CNP arose from the governing principles established under the auspices of the Competition Principles Agreement (**CPA**) entered into by the Council of Australian Governments on 11 April 1995.
- 25 At clause 3(f), the CPA makes explicit that Australian governing entities—including the Commonwealth—are only required to give effect to the principles of competitive neutrality 'to the extent that the benefits to be realised from implementation outweigh the costs.' By operation of clause 1(c) of the CPA, this analysis requires a range of matters to be taken into account where relevant, being:
 - (a) government legislation and policies relating to ecologically sustainable development;
 - (b) social welfare and equity considerations, including community service obligations;
 - (c) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
 - (d) economic and regional development, including employment and investment growth;
 - (e) the interests of consumers generally or of a class of consumers;

- (f) the competitiveness of Australian businesses; and
- (g) the efficient allocation of resources.

- 26 With particular (but by no means exclusive) reference to sub-paragraph (e) above, we urge the Inquiry to focus on the 'public benefit' principles, including universalism, localism, program and source diversity, education, creative risk and quality. These principles are adequately set out at pp 5 – 11 of the ABC's August 2013 policy statement, "The ABC in the Digital Age – Towards 2020":
<http://about.abc.net.au/wp-content/uploads/2013/08/2020_ABC_in_the_Digital_Age.pdf>.
- 27 It is notable that competitive neutrality principles are not intended to be applied as a absolute set of principles, but must be qualified by analysis of public and social benefits arising from the relevant goods and services.
- 28 This is particularly relevant in the context of allegations that, by virtue of the absence of the requirement for the ABC (and the SBS) to earn a commercial rate of return on expenditure, this enlivens competitive neutrality principles such as to preclude the performance by public broadcasters of any functions also performed (in part or in whole) by the private sector.
- 29 The public benefits of public broadcasting are significant, and have wide acceptance. They are reflected in the level of public trust—consistently in the order of 80% of the populace—in the ABC's capacity to deliver universal, independent, impartial services in the public interest.
- 30 ABC Alumni submits that any application by the Inquiry of competitive neutrality principles which fails to have regard to the countervailing benefits of public broadcasting is liable to fall into error pursuant to the operation of CPA cl 3(f).

Inapplicability of competitive neutrality analysis

- 31 It is open to question whether, per the CNP, it is appropriate to analyse the non-commercial activities of the ABC in performing the vast majority of its functions (including its not-for-profit broadcasting and digital services) through a competitive neutrality lens.
- 32 As noted in the CNP, which continues to represent Commonwealth policy in respect of commercial neutrality, "[c]ompetitive neutrality requirements will be applied to significant government business activities, but will not be applied to non-profit, non-business activities". Significantly, the CNP at page 30 identified the ABC as a non-GBE (Government Business Entity) authority.

- 33 Per the CNP, in determining what is a "business" for the purposes of competitive neutrality in the Commonwealth sector, the following criteria must be met:
- There must be user-charging for goods or services;
 - There must be an actual or potential competitor; and
 - Managers of the activity have a degree of independence in relation to the production or supply of the good or service and the price at which it is produced.
- 34 This test may fail in respect of the ABC at the first hurdle: there is no direct user-charging for the vast majority of the ABC's products and services. Any argument that indirect user-charging arises in circumstances where (a) the ultimate users of ABC services are taxpayers and (b) the ABC is primarily funded by the Commonwealth is liable to fail.
- 35 While there may be specific sub-streams of the ABC (ABC Commercial) which might fall within the remit of a competitive neutrality review—such as merchandising, retail, and video-licensing revenues—these exceptions (considered below in response to question 8) prove the rule. The ABC Commercial functions involve user-charging at market rates. By contrast, the ABC more broadly provides free and accessible broadcasting and digital services, in accordance with its charter; the ABC therefore falls outside the scope of a 'business' as the subject of review on competitive neutrality grounds.
- 36 This concern is not semantic or technical—it goes to the heart of the distinction identified in the CNP. Competitive neutrality is intended to address distortions in a market for the provision of commercial services arising from the benefits received by a commercial market participant through its position as a government-owned entity.
- 37 Yet while the ABC is a corporate entity, its primary functions are not commercial. The ABC performs its broadcasting and journalistic functions as a not-for-profit and without competing with commercial media organisations for advertising revenue or other commercial profit streams. It takes no advertising, and does not charge for broadcast or digital services. While it competes with commercial media organisations for viewership and readership, the ABC does not (with minor exceptions) compete with those organisations for commercial revenues.

Availability of Productivity Commission mechanism

- 38 Notwithstanding the concerns set out at paragraphs 31 – 37 above, successive boards and managers of the ABC have committed to working with their 'best endeavours' to complying with the broad principles of competitive neutrality.
- 39 This reflects the proper performance of the ABC Charter requirement to take account of, inter alia, the 'broadcasting services provided by the commercial and community sectors of the Australian broadcasting system.'
- 40 If and to the extent that commercial media organisations have legitimate concerns about the competitive effect of the ABC's performance of its statutory functions, the Productivity Commission provides an avenue for complaint through the Commonwealth Competitive Neutrality Complaints Office (**CCNCO**).
- 41 The CCNCO mechanism has previously considered competitive neutrality allegations in respect of the ABC. A complaint by a commercial operator about the ABC's television production facilities operating in a manner such as to undercut competitors was investigated in 2000 by the CCNCO: see Commonwealth Competitive Neutrality Complaints Office 2000, *ABC Production Facilities*, Investigation No. 4, AusInfo, Canberra (the **2000 CCNCO Complaint**). The 2000 CCNCO Complaint was not sustained; the ABC was found to be pricing its services properly and consistently with competitive neutrality principles.
- 42 Noting the criticism which the Inquiry has received, both in relation to the political circumstances under which the Inquiry was established and in relation to public commentary as to the purpose of the Inquiry, ABC Alumni submits that it would be appropriate for the Inquiry to set out the preferability of the CCNCO as a mechanism for addressing any commercial neutrality concerns.

Section 3: Responses to questions 8 – 14

Question 8

Considering the commercial activities of the national broadcasters (e.g. 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?

- 43 There is no evidence of which ABC Alumni is aware that the ABC possesses or takes any undue advantage of its position as a primarily Commonwealth-funded organisation in the pursuit of its extremely limited commercial activities.
- 44 This position is consistent with the rejection of the 2000 CCNCO Complaint by the Productivity Commission, on the basis that there had been no breach of competitive neutrality principles in the ABC's (commercially insignificant) television production stream.
- 45 The ABC's commercial activities are extremely limited, both as a standalone entity (primarily managed by ABC Commercial) and in the context of the Australian media market. The ABC earned approximately \$43 million in commercial revenue in FY2016-17, comprising less than 5% of the ABC's overall revenue.
- 46 This revenue is primarily attributable to merchandising, retail, and video-licensing revenues, and is invested in the ABC's production base. Those revenues filter through to independent producers, with value to creative and digital industries.
- 47 ABC Alumni are not aware of any basis to allege that the ABC's commercial activities derive any undue advantage from its position as a Commonwealth-funded organisation.
- 48 ABC Alumni notes in relation to the indicia of 'unfair advantage' listed at page 10 of the Issues Paper to the inquiry :
- (a) **No tax benefit:** the Productivity Commission's findings in respect of the 2000 CCNCO Complaint included a finding to the effect that if the ABC does in fact obtain any advantage in setting prices, the ABC did not appear to be exploiting any such advantage;
 - (b) **No cheaper debt financing** appears to have been alleged or to arise in respect of the ABC's commercial activities, to the knowledge of ABC Alumni;
 - (c) **Commercial rates of return.** The ABC is not required to make a commercial rate of return. ABC Alumni notes, without limitation, the findings of the CCNCO in respect of the 2000 CCNCO Complaint. At a higher level, ABC Alumni also notes and endorses the preliminary findings of the Deloitte Access Economics report in relation to the billion dollar plus contribution of

the ABC to the Australian economy (reported in a speech by Michelle Guthrie, Managing Director of the ABC, Melbourne Press Club, 19 June 2018); and

(d) **Exemptions from regulatory constraints or costs:** The ABC is not the beneficiary of regulatory exemptions in relation to its commercial activities which would have the effect of distorting the competitive landscape.

49 An examination of the ABC Shop model is instructive. 50 ABC Shops have closed since 2015, shedding 200 retail jobs in the process. The decision to close the ABC Shops (while retaining the branded online shop and selected branded kiosks), though driven by the realities of online commerce, angered many shoppers—particularly people shopping for specialist children's content, and older people less comfortable or experienced in navigating online commerce platforms.

50 The ABC Shop Online is an effective, cost-efficient operation, which derives no positive benefit from its position within an otherwise Commonwealth-funded organisation.

51 The limited commercial sales made through the ABC Shop assist in defraying the costs to taxpayers of operating the not-for-profit functions of the ABC. ABC Shop sales of videos, books, games and merchandise generally relate to broadcast programming; the products reflect the creativity and intellectual property which went into their creation. It would be a denial of commercial common sense for the ABC not to seek to recover a percentage of the original production or licensing costs for taxpayer-funded programming.

52 Notably, the maintenance of the ABC Shop activity across limited, cost-effective platforms helps fulfil the ABC's responsibilities under the ABC Charter, in circumstances where a significant proportion of ABC product is aimed at children and assists in performing the ABC's educative function. The ABC has always seen children's programming as an important part of its educative role, a function which commercial broadcasters have largely abandoned.

53 In circumstances where the ABC's commercial activities:

- (a) are limited in scope and revenue;
- (b) do not derive any of the established categories of 'undue advantage' from the ABC's position as a primarily Commonwealth-funded organisation;
- (c) assist in defraying the costs to taxpayers of financing the ABC's not-for-profit broadcast and online functions; and
- (d) in some instances cater to relatively niche sub-markets which commercial media organisations have avoided,

no apparent competitive neutrality concerns arise in respect of the ABC's commercial activities.

- 54 These commercial activities should be clearly distinguished from the vast majority of the ABC's activities, being not-for-profit broadcast and online activities not subject to competitive neutrality concerns within the remit of this question.

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?

- 55 The ABC is subject to far more regulation and degree of scrutiny of its compliance with high standards than commercial media organisations.
- 56 The principal frameworks which impose regulatory burdens on national broadcasters over and above commercial media organisations are:
- (a) the *Australian Broadcasting Corporation Act 1983* (Cth), including but not limited to the functions and obligations prescribed by the ABC Charter, and the development of ABC editorial guidelines and policies;
 - (b) the *Public Governance, Performance and Accountability Act 2013* (Cth), which:
 - (i) sets the standards of governance, performance and accountability for all Commonwealth entities;
 - (ii) imposes specific duties on the ABC Board and Executive relating to the preparation of financial statements, the way in which accounts are maintained, the disclosure of directors' interests, and the preparation of annual reports; and
 - (iii) imposes a general duty on all ABC employees to, amongst other things, act honestly, in good faith and for a proper purpose;
 - (c) the *Public Interest Disclosure Act 2013* (Cth);
 - (d) Commonwealth employment-related legislation, including the:
 - (i) *Equal Employment Opportunity (Commonwealth Authorities) Act 1987* (Cth);
 - (ii) *Racial Discrimination Act 1975* (Cth);
 - (iii) *Sex Discrimination Act 1984* (Cth);
 - (iv) *Australian Human Rights Commission Act 1986* (Cth);
 - (v) *Disability Discrimination Act 1992* (Cth);
 - (vi) *Age Discrimination Act 2004* (Cth);
 - (vii) *Fair Work Act 2009* (Cth); and

(viii) *Work Health and Safety Act 2011 (Cth)*.

57 The distinction between the looser degree of regulation incumbent upon traditional radio and television commercial organisations, and the higher regulatory standards imposed upon the ABC, is obvious by applying the example of news and current affairs programming:

- (a) the Channel Seven network reportedly paid \$150,000 to the former Deputy Prime Minister Barnaby Joyce and his partner Vicki Campion for an interview. Chequebook journalism is a staple of programs like Sunday Night (Channel 7) and 60 Minutes (Channel 9) and popular magazines. By contrast, ABC journalists are explicitly banned by the ABC's own editorial policies from paying for interviews. This is a decision based on ethical principles that the practice of paying for "exclusives" is in conflict with the 'accurate and impartial' journalism that the ABC is required to produce;
- (b) The *ABC Act* and the ABC's internal editorial policies demand rigorous standards for reporting and the prompt correction of errors. Those policies also mandate a clear distinction between reporting and opinion;
- (c) The ABC's complaints process is robust, to a much greater degree than is required for commercial news organisations. Moreover, complainants to the ABC who are dissatisfied with responses are able to take their case to the Australian Communications and Media Authority. Indeed, all complainants are notified of their right to do this. Text-based news organisations and their digital platforms are supposed to comply with voluntary codes of conduct—but the Australian Press Council has often been remarkably slow in assessing claimed errors of fact. On occasions verdicts by the APC which ought to be published by the offending organisations were ignored, publicly contested or ridiculed.
- (d) Unlike commercial media organisations, the ABC and SBS are also answerable to the Commonwealth Parliament through the Senate Estimates process.
- (e) Lastly, at all levels of government, politicians frequently ignore the legislated 'independence' of the ABC and the SBS to make public complaints about perceived bias, and in some cases attempt to intimidate the organisations.

58 The unavoidable inference is that, other than in the area of defamation law, the regulatory and legislative standard applicable to the ABC and SBS is significantly more onerous.

59 Notwithstanding the competitive impediment on the nature of the services able to be provided by the ABC relative to its commercial counterparts, the ABC's regulatory and editorial standards, and its application for public benefit principles of public

broadcasting, results in positive consumer outcomes in quality and journalistic rigour. As noted by Glenn Dyer and Bernard Keane (Crikey, 7 February 2014):

The ABC is rightly held to a higher standard on news and current affairs, given it is spending taxpayers' money. As a result, it has far higher levels of trust than commercial television or radio. Four Corners is not comparable to 60 Minutes; 7.30 not comparable to Today Tonight; AM not comparable to Ray Hadley. You might try to compare Triple J to FM radio, but even then Triple J is required to promote Australian music in a way that commercial broadcasters aren't...

- 60 Moreover, the opportunity conferred on commercial broadcasters through the package of benefits contained in the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, including licence fee reductions and the liberalisation of media ownership laws, have decreased the comparative regulatory burden upon commercial media organisations.

Question 10

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

- 61 The ABC and the SBS have a clear understanding of their obligations to operate in accordance with competitive neutrality principles.
- 62 The ABC and the SBS operate according to legislation with boards of independent directors strictly monitoring all aspects of operations.
- 63 ABC managers are questioned at length at Senate Estimates hearings, including the corporation's performance in acquitting its statutory requirement to deliver high-quality content across a range of platforms and to develop its digital presence.
- 64 ABC Alumni notes also the accountability mechanism conferred by the CCNCO, including as applied in practice under the 2000 CCNCO Complaint.
- 65 ABC Alumni notes that in relation to the current degree of community and political oversight of the ABC this environment has the effect of strengthening the ABC's attention to its regulatory obligations relative to those of commercial media organisations.
- 66 In these circumstances, and noting the concerns set out in Section 2 of this submission in relation to the proper application of competitive neutrality principles ABC Alumni submits that the reporting and accountability by the ABC to the exercise of its 'best endeavours' to observe competitive neutrality is more than 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?

- 67 ABC Alumni has not received any feedback or input which indicates that the ABC is the beneficiary of, or has exercised, any unfair competitive advantage.
- 68 ABC Alumni refers to its submissions above in relation to the higher degree of oversight, regulatory and administrative burden, and the standards with which the ABC is required to comply, and submits that the ABC in actuality operates at a significant commercial disadvantage as a result of these burdens attributable to public ownership.

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?

- 69 Members of ABC Alumni have not been able to identify any areas in which SBS can be seen to be breaching the requirement to be mindful of the ABC's operations or those of community broadcasters.
- 70 SBS has an obligation to provide services for multicultural and multilingual audiences and accordingly produces and buys programs which are a complex mix of broad interests, while some will attract only niche audiences. SBS for example might broadcast a series of programs about major world religions. Those programs might attract people who traditionally watch or listen to specialist ABC programs on religion. Yet in no sense is that a conflict of interest or programming which SBS should avoid, having regard to SBS's obligations under its charter.

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?

- 71 In ABC Alumni's submission, the Inquiry must have regard to the degree to which, both in traditional spheres of broadcasting and digital services, the ABC's emphasis on higher editorial standards and adherence to the public benefit principles referred to above contributes positively to the quality and diversity of the Australian media industry, and provides a pro-competitive benefit to Australian consumers of media.
- 72 The ABC is legislatively required by its Charter to provide:
- (a) 'innovative and comprehensive broadcasting services of a high standard';
 - (b) 'broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community'; and

(c) 'broadcasting programs of an educational nature',

as well as, inter alia:

(d) 'to provide digital media services'; and

(e) 'to encourage and promote the musical, dramatic and other performing arts in Australia.'

73 It is ABC Alumni's view that contributing to 'a sense of national identity', reflecting 'cultural diversity', and 'broadcasting programs of an educational nature' are not core business for for-profit commercial media organisations in a challenging landscape for revenue. However, the effect of this is that the scope of services which the commercial media organisations fail to provide (and which the ABC effectively covers) is far greater than effective and comprehensive regional programming alone.

74 Moreover, in spheres where the ABC does provide a service which overlaps with commercial offerings (such as in news, current affairs, drama, and digital services), the ABC's statutory commitments to high-quality and innovative services across a range of platforms (and the higher regulatory and editorial standards applicable to ABC-produced content) result in pro-competitive and pro-consumer outcomes.

75 Radio, television and digital media are constantly evolving and the public broadcasters are constantly re-thinking priorities. It is evident however that both the ABC and SBS compete in and complement the offerings of commercial media organisations in the market for broadcast and online content services, which is as it should be given national competition policy.

76 For example—the ABC, the SBS and Channel 10 all provide conventional television news services. While some overlap exists between those services, content, style and substance will typically be quite different. SBS offers its viewers a world view with some limited Australian content whereas Channel 10 offers a strong city based domestic focus with some limited national stories. The ABC sits somewhere between the two, providing state, national and international news on merit but also drawing from a broader range, particularly original investigative journalism, rural and regional stories. As a result, the ABC news output helps contribute to a sense of 'national identity', in accordance with the ABC Charter obligations.

77 In the current affairs arena, the difference is even more stark. Four Corners sets the national benchmark for investigative journalism, as it has for much of the last 50 years. The leading commercial channels, Channel 7 and Channel 9 seek to compete but its main vehicles 60 Minutes and Sunday Night struggle for credibility—witness 60 Minutes' involvement in a kidnapping scandal in Lebanon in 2016. Faced with declining audiences primarily as a consequence of digital disruption, the commercial television networks have sought to maximise ratings by narrowing their focus on the

most popular genres—news, sport, cooking programs, talent shows and light entertainment.

- 78 Further areas of comparison arise in digital programming, radio, and drama. Commercial digital channels typically offer more sport and traditional varieties of drama. By contrast, the ABC has dedicated one of its digital channels to Australia's only free-to-air 24 hour news service, offering a complementary service to news radio; another digital channel is devoted to children's programming, and another to comedy. In radio, the limited sphere of intellectual and cultural offerings available on commercial channels operates in contradistinction to the remarkable range of programming available on ABC Radio National.
- 79 ABC Alumni submits that the range and diversity of programming offered by the ABC is indicative of the obligation and public role of the ABC in providing high-quality content in areas not adequately serviced by the commercial market. What commercial channel would offer (especially on its main channel) programs such as *Media Watch* (which does not shy from criticism of ABC content), *War on Waste*, the *Gruen* series, *Planet America*, *Stargazing Live*, *Catalyst*, *Compass*, *Landline* or *Q & A*, let alone indigenous-centric dramas like *Redfern Now* or *Mystery Road*?
- 80 The Inquiry should consider that the Federal Government specifically changed the ABC Act in 2013 to require it to undertake 'digital media services'. The ABC has, in implementing that obligation, adopted the same principles which apply to broadcasting to its digital platforms, namely to be both 'innovative and comprehensive'.
- 81 Thus, in addition to providing national and international news online, the ABC provides news generated in each State and Territory, and specifically in regional areas—where the ABC operates almost 50 radio stations. All the ABC's research shows that those services in rural and regional Australia are highly valued by taxpayers.

Question 14

Do you have comment on these guiding principles?

- 82 Without re-treading the matters covered by this submission, ABC Alumni submits that:
- (a) the guiding principles set out in the Productivity Commission's Inquiry into Broadcasting (2000) remain relevant to the governance of broadcasting and media in Australia;
 - (b) the ABC and SBS are obliged, by the operation of their respective charters, to directly give effect to several of those principles (such as in promoting the interests of consumers, reflecting the community's social and cultural objectives, encouraging diversity of major sources of information, providing for equitable access to broadcasting and encouraging innovation);
 - (c) the ABC, in particular, should be congratulated on giving effect to these principles in a cost-effective and pro-competitive manner; and
 - (d) noting the particular benefits arising from public broadcasting, the next iteration of the principles underpinning the development of the Australian media industry should have explicit regard to the those public benefits.
- 83 ABC Alumni would be delighted to assist the Inquiry with any questions that might contribute to a successful outcome for the Australian public.