

30 October 2017

Senator, Jonathon Duniam
Senator for Tasmania
Chair of Environment and Communications Committee
Parliament House
Canberra ACT 2600

By email: senator.duniam@aph.gov.au

Dear Senator

I write in relation to comments made by Mr Michael Ebeid, SBS's Managing Director, during Senate Estimates on 24 October 2017 in relation to the accuracy of Nine Entertainment Co's submission to the House of Representatives inquiry into the Sustainability of the Australian Film and Television Industry.

Nine understands that a discussion on significant issues of public policy will often involve opposing viewpoints, and welcomes robust and open debate from all participants. However, certain statements made by Mr Ebeid at Senate Estimates were inaccurate and must be rejected.

Food Network content

Mr Ebeid stated that he has evidence from Scripps, the rights holder for the *Food Network*, indicating that there was no bidding war between SBS and Nine for the *Food Network* content. He explicitly stated in his evidence to the Committee, "*they [Nine] claimed that they were interested in the Food Network when in fact they were not*". Nine denies this assertion. The true position is:

- Nine was interested in and had in fact entered into commercial negotiations with Scripps for programming which included the *Food Network* content.
- During Nine's negotiations with Scripps, they indicated by email on 15 September 2015 they would not grant Nine a licence for the *Food Network* content, despite Nine's interest in acquiring it.
- On 30 September 2015, SBS announced that it had acquired a licence from Scripps for the *Food Network* content.¹

The suggestion by SBS that Nine misrepresented the position is simply false. Nine's submissions in respect of this matter were true and accurate. An excerpt from Nine's submissions on this point is **attached**.

The Night Manager and the second window

Mr Ebeid claimed that Nine made a false statement in its submission to the House of Representatives Committee claiming that *The Night Manager* should have been acquired by SBS on a second window. Nine was aware that it was purchased on second window and at no point made such an allegation in relation to

¹ <http://www.smh.com.au/business/media-and-marketing/sbs-to-launch-24hour-food-channel-in-talks-with-government-over-funding-cuts-20150930-gjxwc6.html>



The Night Manager and a second window. Whilst Nine did make some comment in relation to *The Night Manager* in its submission, those comments solely related to concerns about SBS's bidding practice of buying off script prior to production. In Nine's appearance before the House of Representatives Committee on 20 July 2017, Nine's CEO, Mr Hugh Marks referred to *The Handmaid's Tale* and not *The Night Manager* as being more appropriate for a second window acquisition by SBS. Mr Ebeid appears to have conflated these issues in his address to the Senate Estimates committee.

Nine is deeply concerned that Mr Ebeid has alleged to the members of the Senate Estimates Committee that we "knowingly misled Parliament". For the record, Nine denies the assertion. It is clear that Mr Ebeid's allegations against Nine were inaccurate and made without adequate investigation. The information and examples referred to in Nine's submission to the House of Representatives were considered carefully, and provided to promote a policy debate on the role of the national broadcasters in the new media landscape. We expect that the SBS would express a countervailing view in response, but each of our organisations has a responsibility to participate in the debate in good faith, and in a responsible, informed and accurate manner. The allegations made by Mr Ebeid against Nine are wholly untrue, and do not advance the discussion in any constructive manner.

We trust that the information provided clearly outlines Nine's position, however we would be more than happy to discuss these matters in further detail with you in person.

Yours sincerely

Clare Gill
Director Regulatory Affairs
Nine Entertainment Co

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Senator, the Hon Mitch Fifield, Minister for Communications and the Arts

Ms Michelle Rowland, MP, Member for Greenway, Opposition Spokesperson for Communications and the Arts

Mr Mark Mrdak, AO, Secretary, Department of Communications and the Arts

Mr Luke Howarth MP, Member for Petrie, Queensland, Chair of House of Representatives Standing Committee on Communications and the Arts

Mr Michael Ebeid, Managing Director, Special Broadcasting Service

Dr Bulent Hass Dellal AO, Chairman, Special Broadcasting Service

Members of the Environment and Communications Legislation Committee

**Excerpt from Nine Entertainment Co.'s Submission to the House of Representatives
Standing Committee on Communications and the Arts - Inquiry into the Australian Film and Television
Industry, April 2017 (p7-8)**

"Of more concern are the recent activities of SBS. SBS will receive \$814.2 million over the next three years from 2016-17 in government funding. Nine consistently finds itself in a competitive bidding process with SBS for programming. SBS's content acquisitions appear to be based on chasing commercial ratings and revenue while not servicing its charter or target audience. This alone is a significant factor in driving up the cost of commercially attractive content while eating into commercial TV revenues.

Recently Nine found itself outbid for commercially significant content by SBS for its 9Life channel. Late in Nine's negotiations with US based content distributor Scripps for their lifestyle programming, Nine was advised SBS had put a significant commercial offer to them for the food component of the content package. As a result the Food Network component of the Scripps package was withdrawn and sold to SBS.

SBS now has a channel dedicated to food programming. SBS's Food Network predominantly runs commercial US food programs, a sample of which is outlined below (see Table 3.). It is hard to argue that this type of programming sits anywhere within their charter yet Nine as a commercial broadcaster was unable to compete when acquiring the content. Nine would have delivered this programming to the Australian public for free, not subsidised by the Australian taxpayer."