Senate Standing Committee on Environment and Communications

QUESTIONS ON NOTICE

Inquiry into the Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 [Provisions]

From: Senator Karen Grogan (Committee Chair)

1. Free TV's evidence to the inquiry indicated that it would be possible for manufacturers to comply with the prominence framework via a combination of server configuration changes and software updates:

    a. server configuration changes could be used to implement a requirement for BVOD apps to be added to the list of apps on the primary user interface of regulated television devices, and for apps to be downloaded during the initial set up of devices; and

    b. software updates could be used to implement changes to the primary user interface of devices (such as adding another app row or ribbon), along with the live television and EPG requirements.

    - Is this the case?

CESA Response:
No not for all models. As per CESA submissions and evidence, while changes can be implemented via server configuration and/or software updates for some models, other **models with lower memory may need hardware modifications to add 5 further apps to the homescreen.** This hardware modification requirement will affect entry point models with lower memory for some manufacturers**.**

Additionally (as detailed in Q2 below), <u>even for models where changes can be made via server configuration and/or software upgrade</u>, it is critical to understand that **adding 5 new apps or another app row/ribbon is** a **major, time consuming and costly change with impacts on Australian consumers.**

There is an additional complication for TV manufacturers that use the operating system of a third party as they need to get the consent of the third party operating system provider for the homescreen changes. For those suppliers who import and distribute 'off the shelf' televisions there is a significant risk that consent will not be provided. Consequently, these distributors will have no option but to withdraw televisions from the Australian market.

All of this makes it more relevant to focus on the steps and issues in Q2 below versus whether it is a server, software and/or hardware change.

- Are there any elements of the Bill as introduced to the Parliament, or the draft prominence regulations released on 6 February this year, that could not be implemented either via a server configuration change or a software update?

CESA Response:
Yes. As above some manufacturers have some models with lower memory where the addition of further BVOD apps and auto instal of them would involve hardware changes.

Further as the global trend towards Smart UIs becomes mainstream, bespoke televisions will need to be designed and developed only for Australia at significant cost, given the low manufacturing yield.

- If so, which elements specifically, and what changes would be required to implement them?

CESA Response:
Chipset and hardware changes to allow auto instal of apps on homescreen. Bespoke televisions will require customised platforms, hardware, chipsets, support etc.

The Live TV tile with flexible design options and EPG requirements are not an issue for any manufacturer.

2. Free TV's evidence argued that:

   a. server configuration changes could be implemented within 1 month of the commencement of the Bill; and

   b. software updates could be implemented within 6 months of the commencement of the Bill.

   - Are these timings feasible from a technical perspective?

   CESA Response:
   No. These timings are not feasible from technical, commercial or other perspectives and they fail to recognise that these regulatory changes involve major, multi- step internal processes <u>for each model,</u> as well as additional processes and permissions for manufacturers who rely on third party operating systems.

   Relationships vary among TV manufacturers with each operating system provider and manufacturer having its own, commercial and technical arrangements and its own design requirements.The various planning, design, testing and implementation processes must also be guided by what the latest available homescreen user technology and standard global user interface is for a particular manufacturer and model.

   <u>Even for models where all required changes can **technically** be made via server configuration and/or software upgrade</u>, it is critical to understand all the following steps and considerations:

   I. **Adding 5 new apps or another app row/ribbon is not just a quick "update"**. It is a major, time consuming and costly exercise to change a global standard homescreen that is carefully crafted over a long design and testing process to be optimal in size, layout and experience **for the millions of consumers that will use it worldwide.**

   Manufacturers cannot and will not just "whack on" another app row with 5 extra apps for <u>any</u> market. To do so is nothing like the updates required for smaller changes or which do not impact a critical standard global design. Any change to the homescreen goes to the heart of the user experience and requires careful consideration, planning and implementation.

   The suggestion that you can just "add another app row" is not feasible from a design or consumer experience perspective. It involves reducing app sizing to levels which are not optimal for the consumer (especially older or vision impaired Australians) and may present accessibility issues. Alternatively other homescreen elements, including latest Smart UI features, would need to be deleted and existing commercial arrangements impacted.

   II. **Australia only reconfiguration steps** would include at least the following (even for models where it is "just" a software change):

a) **ACMA guidelines** to assist manufacturers. For example, it will not be clear what the primary user interface is without ACMA assistance and assessment of each particular model for a manufacturer (especially noting the evolution at 3 below). The ACMA guidelines are unlikely to be available in 1 or 6 months. Manufacturers require the ACMA guidelines in order to define the scope of design changes. It is critical that the implementation timeframe factors time needed for development of the ACMA guidelines.

b) The **global homescreen design** must then be locked down, which happens late each year for the models to be released approximately 18 months later. Australian only homescreens will not have separate teams allocated until global planning for a particular year's homescreen is complete and it is understood what elements are planned for that year's standard global models.

c) Separate **Australia only planning, design, software testing and implementation processes for each model**. Teams must be diverted from working on the following year's projects for this Australia only configuration and there are only a very limited number of software updates allocated per region.

   It should be noted here that NO OTHER COUNTRY requires homescreen app positioning/ reconfiguration, let alone 5 new auto installed apps - not the UK Bill, Germany or other. The reconfiguration required by this novel regulation will accordingly be a special body of work for each model just for Australia which carries costs which must be passed to Australian consumers. **The greater the deviation from the standard global homescreen, the greater the cost.** This will become particularly important as we see the radical shift in homescreen design in 3 below.

d) Planning, design and testing stages above must include consideration of:
   i.   how to fit all latest planned standard global homescreen experiences in, noting that the homescreens of the future will include AI driven consumer content, internet of things connections etc and not look like they do now
   ii. how to deal with 5 further apps on top of these experiences from a space perspective without impacting accessibility requirements, commercial arrangements and experience for all consumers
   iii. loss of revenue from existing commercial arrangements that run past 2026 and Australia only reconfiguration costs, both of which would need to be passed on to consumers and built into the price of Australian models, with decisions then taken on which models to implement the required regulatory changes for.

   On this latter point **CESA wants to make sure that all stakeholders understand the impact of the proposed regulation (versus alternative positioning options) is that manufacturers will not be able to implement across all models, particularly at the entry level where they know there is more price sensitivity.**

   This means many Australians will miss out on the latest models including latest Smart UI's and homescreen innovations and will instead get old models and significantly less choice of models than other countries. For (higher end) models that do still make their way to Australia, they will be more expensive. This is because 5 apps require a radical shift from the global standard.

III. Future homescreens are likely to feature Smart UIs with content NOT ANY APPS, international or local (as we are already seeing with Firestick and Foxtel Hubl and as per evidence in CESA submissions).

Once homescreens remove apps like this altogether they will not have the menu functionality/capability that allows apps to be auto installed (and current homescreen positioning requirements to be met). At this point, reconfiguring Australian TVs to reintroduce app- based menu functionality will not be feasible for any model and Australian consumers will accordingly only receive bespoke televisions based on old models with old homescreens if manufacturers are to comply. **For this reason it is critical that there is an exception to compliance for this situation**.

IV. **Free TV evidence from Stephen Cleary** at the hearing acknowledges that software changes are not quick and typically involve an 18 month timeframe: *"Typically, from a TV software development view, 18 months is their preferred time frame. From a software point of view, they will gather different requirements and they will try to implement them all together."*

He goes on to use the following bold language which indicates he is not certain and does not appreciate that radical departures to a standard global homescreen are not a matter of a "preference" but require at least 18 months for all of the above steps to be completed, even where implementation is ultimately via a software change: *"…typically, 18 months is their preferred time… Again, it depends. **I would say** some of the changes, like **maybe** adjusting the primary user interface—those types of changes can be done in a shorter time frame."*

V. Member inquiries of Smart TV development teams confirm that a more feasible timeframe to implement is 24 months, not 18 months, to account for the above steps and the need for 2026 models to be phased in over the first part of 2026.

- What impact would they have on product development and manufacturing processes, and on product supply chains?

CESA Response:
As above

- Are these timings feasible from a commercial perspective?

CESA Response:
No. In addition to the above, there are costs in working outside standard development timeframes just for Australia. Again, these must be passed to consumers and will impact the number and choice of models for many Australians.

- What impact would they have on existing or future commercial agreements?

CESA Response:
These timeframes will impact many existing commercial arrangements and many more than under an 18 month/ 2 year timeframe.

Irrespective of timeframe, the requirement to include 5 or more individual free to air BVOD tiles on the streaming app menu means that future commercial arrangements will be more limited. This contradicts the statement in the explanatory memorandum that *"there would be no constraint on*

the ability of manufacturers to maintain and expand commercial arrangements with international streaming services for premium positions on their devices".

- What impact would these timings have on the range and functionality of devices supplied in the Australian market?

CESA Response:
Working outside standard global homescreen development timeframes and processes involves extra cost, with any extra cost impacting which models are released here and the functionality of those that are released.

1-6 month timeframes so radically depart from standard homescreen development timeframes that it will mean even less new devices/homescreens for many Australians (than compared to an 18 month implementation timeframe). Again, this is particularly so for entry level models where manufacturers know consumers are more price sensitive. And again, compressed timeframes will mean most Australia consumers get old models with old homescreens that do not include the latest user experiences and functionality -such as AI based content geared to the consumer's specific profile and preferences.

For models where Australian consumers can absorb the costs of reconfiguration, there will still necessarily be less of the latest homescreen functionality available globally (given 5 new apps on the homescreen necessarily entails something loss of another homescreen experience).

3. Would it be feasible to implement the prominence framework with a 12 month timeframe, rather than the 18 months stipulated in the Bill as introduced?

   CESA Response:
   No, for the reasons above.

   a. How does this compare with the possible 1 to 6 month timeframe proposed by Free TV and what impacts would a 12 month timeframe for the application of the new framework have on manufacturers?

   CESA Response:
   A 12 month timeframe will have the same impacts as a 1-6 month timeframe and much of this period will be waiting for publication of the ACMA guidelines. Those impacts are outlined above.