

Senate Standing Committee on Environment and Communications

QUESTION ON NOTICE

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

From: Senator Karen Grogan (Committee Chair)

During the hearing on 23 February 2024, SBS MD, Mr James Taylor, raised the issue of having the *SBS On Demand* app removed, and threatened to be removed, from TV manufacturers' app launchers and app stores.

Could SBS please elaborate on Mr Taylor's claims, including:

- any threats made by manufacturers to remove your app from their app store/app launcher;
- any instances where your app was removed from a manufacturer's app launcher and/or homepage; and
- any instances where your app was removed *entirely* from the manufacturer's app store;

The Committee may consider requests for confidentiality for your response.

Answer:

Set out below is a chronology of events pertaining to the statements made by Mr Taylor during his Opening Statement to the Committee which fully substantiates those statements. At no point did SBS suggest that the SBS On Demand app had been removed from App Stores or platforms entirely. As shown below, we referenced threats made to this effect, and in one instance, noted that a manufacturer followed through on its threat to remove SBS On Demand from the "app launcher", being a prominent position on the user interface.

Full details are provided below, and the behaviour of the manufacturer and the platform is evidence of the need for urgent regulatory intervention. Whilst there were attempts at negotiation, it should be emphasised that these negotiations would have taken place in the context of the significant threats made to SBS, should it not agree to pay fees or share revenue. It is open to manufacturers and platforms to unilaterally impose these conditions or remove the SBS On Demand app at any time, which is not a negotiation on fair terms.

Samsung

On 26 June 2018, SBS received an updated agreement from Samsung governing the inclusion of the SBS On Demand application on its service.

The email from Samsung's Partnership Manager was as follows:

"I am pleased to say that I finally have the agreement for you to review; as discussed it includes both an ad revenue share for Samsung and the \$150K placement fee for the "launcher" on the home screen which would also provide you the ability to deep link to program highlights.

The \$150K is actually a “capped” fee for SBS as our standard is to charge \$1 per newly activated device (approx.. 30K new devices are activated a month with a much higher number around Christmas etc.). I have also dropped the Revenue share from our standard 30% to 15% and provided for up to 30% costs to be deducted from your gross ad revenue.”

The reference to the ‘launcher’ is to a feature of the user interface on Samsung connected TVs which features a selection of the apps available. Presence in the app launcher means that an app is more easily available to users.



Further correspondence on 28 June 2018 clarified that if the revenue share arrangement was not agreed to, the SBS On Demand app would be removed from the launcher (or featured apps placement).

Please keep in mind however that this current placement in “featured apps” is the placement we provide to partners who have an ad revenue share in place with us. Should we not come to an agreement with regards to that then SBS will be moved into the app store and customers would then need to click on the store icon to open that and then do a search for your app.

On 17 July, SBS informed Samsung that it would not agree to pay the placement fee or agree to the revenue share arrangement. SBS’s correspondence explained SBS’s position as a publicly funded broadcaster with limited government and commercial revenue, and requested Samsung reconsider the proposed ‘placement fee’ and revenue share proposal.

On 18 July 2018, Samsung advised that it would be de-prioritising the SBS On Demand app, in effect making it much harder for users to find:

The SBS app is very popular with our audience but unfortunately the stance that Samsung has with regards to our app partners is not something we can make acceptance’s too [sic]. All app partners placed in “recommended” on our home page must have a commercial agreement in place with us and without that we must follow HQ’s direction to move you into the app store and out of the home page TV menu.

...

As you have officially declined the ad revenue share I will now have to proceed to remove your app out of the home page TV menu and into the store but if at any time you would like to reopen the commercial discussion and app placement please let me know.

This correspondence formed the basis of the evidence provided by Mr James Taylor, SBS Managing Director, during the Committee's hearing on 23 February 2024:

In June and July 2018, the manufacturer of the best-selling connected TV in Australia wrote to SBS and advised that unless we agreed to a 15% revenue share arrangement and a placement fee, SBS would be removed from the 'app launcher' on the TV homepage for that brand.

When SBS refused to pay, the manufacturer carried through on their threat.

On 20 August 2020, Samsung re-engaged with SBS and a call was held on 25 August 2020. During that call, Samsung advised that if SBS did not agree to a 15% revenue share of ad revenue served through Samsung connected TVs, they would no longer make available the SBS On Demand app (in any form) on the 2021 range and beyond.

On 21 September 2020, James Taylor wrote to the President of Samsung Electronics Australia which outlined the nature of SBS's services as a government owned, hybrid funded public broadcaster whose shareholders are the Australian public. The letter outlined that SBS is a not for profit corporation, and that all revenue generated by SBS must be re-invested in delivering essential services to Australian audiences across its platforms. SBS argued that it should receive the same exemption as that offered to other public broadcasters.

The letter further explained the impact of the proposal on SBS's ability to deliver public service content and flagged SBS's obligations to raise the matter with relevant Government ministers.

Following this correspondence and SBS's indications it would seek to escalate the matter, in October 2020, a further phone call with Samsung confirmed that Samsung would not proceed to remove SBS On Demand from their platforms entirely. However, whilst SBS On Demand is available for users to search for and download, on the Samsung App Store, the SBS On Demand app is not preloaded or prompted for installation.

Amazon

In August 2023, we received notification from Amazon that under its Publisher Services Policy and Inventory Optimisation Policy, SBS would be required to pay Amazon 30% of the revenue derived from being on that platform, in order to remain on the Fire TV platform.

Whilst there was openness on the part of Amazon to undertake further conversations regarding the proposed agreement, there is a clear power imbalance in terms of any commercial negotiations given the ability of the platform provider to remove the SBS On Demand app at any time for any reason.

Following an initial exchange of correspondence, the public reporting of these demands¹, and request from SBS for a meeting, Amazon's intentions remain unclear, leaving the potential for these

¹ See for example, <https://www.afr.com/companies/media-and-marketing/amazon-demands-30pc-of-ad-revenue-from-tv-networks-apps-20230914-p5e4of>

policies to impact SBS at any moment. We would also draw your attention to media coverage which noted this was a new global policy which Australian content players only became exempt from following media coverage. That article also notes the lack of clarity regarding Amazon's future plans.

We note that the Inventory Optimisation Policy Amazon submitted to SBS in August 2023 is still 'live' on their website² and presumably could be enforced at any time.

Inventory Optimization Policy

Advertising Inventory Share Requirement

Developers of any Fire TV Ad-Enabled App with usage of 50,000 hours or more per month in the United States must, after being contacted by Amazon, integrate that app with [Amazon Publisher Services \("APS"\)](#) and provide Amazon with 30% of the Fire TV Ad-Enabled App's total in-country advertising impressions. Effective September 1, 2023, developers of any Fire TV Ad-Enabled App with usage of 30,000 hours or more per month in any other country in which APS is available must, after being contacted by Amazon, integrate that app with APS and provide Amazon with 30% of the Fire TV Ad-Enabled App's total advertising impressions in each such country. Amazon will retain 100% of the revenue from these impressions, which must be provided at no cost to Amazon and without excluding or limiting Amazon's access to times, programs, or categories. Use of APS is subject to the Amazon Publisher Services Agreement available [here](#).

Advertising Revenue Share Requirement

Effective September 30, 2023, developers of any Fire TV Ad-Enabled App with usage of 30,000 hours or more per month in any country in which APS is not available must, after being contacted by Amazon, provide Amazon with 30% of all revenue received for any advertising in the Fire TV Ad-Enabled App in each such country.

Feedback

Additional Terms

The usage thresholds discussed above represent the total amount of time a Fire TV Ad-Enabled App is used on a monthly basis per country, as calculated by Amazon.

Developers of Fire TV Ad-Enabled Apps must promptly provide Amazon with any reporting Amazon reasonably requests to confirm compliance with the Inventory Optimization Policy.

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Mr Taylor's evidence

We note evidence from Mrs Evelyn Soud, Chief Executive Officer of the Consumer Electronics Suppliers Association (CESA) during the hearing as follows, and wish to make clarification:

Mrs Soud: Yes. There was a comment made this morning by one of the broadcasters that their app was taken off the app store or wasn't on the app store. We have checked, and confirmed that—certainly from CESA's TV members' perspective—that is not correct. All of the five apps are on our members' app stores. So we aren't sure where that was coming from.

This evidence by Ms Soud is incorrect. In no part of its evidence did SBS claim that the SBS On Demand app had been "taken off the app store or wasn't on the app store". SBS's evidence was

² <https://developer.amazon.com/docs/policy-center/fire-tv-advertising.html#inventory-optimization-policy>

regarding the removal of the app from the app launcher, and the subsequent threats made to SBS to remove the SBS On Demand app from two platforms, which indicate the substantial power imbalance between the manufacturers and Australian content providers. SBS's evidence described:

1. A threat made to remove SBS On Demand from an app launcher (or prominent position) if a revenue share agreement was not entered into, which was subsequently enacted (see evidence above)
2. Threat made to remove SBS On Demand from the Samsung and Fire TV platforms if a revenue share agreement was not entered into (which SBS did not indicate had been enacted).

We refer to the transcript of Mr Taylor's remarks, which make this clear:

Mr Taylor: [...] In June 2018 the manufacturer of the best-selling connected TV in Australia wrote to SBS and advised that unless we agreed to a 15 per cent revenue share arrangement and a placement fee, SBS would be removed from the app launcher on the TV homepage for that brand. When SBS refused to pay, the manufacturer carried through on their threat, making it much harder for audiences to find the SBS On Demand app. Then, in August 2020, that same manufacturer delivered the same demand, but this time threatening to take SBS On Demand off the platform entirely. It was difficult for me to even find a representative in Australia for us to challenge this with; a reflection on how these companies are imposing their global commercial rent-seeking activities from thousands of kilometres away, with no regard to local audiences or the public interest.

In August 2023, we received notification from another platform operator, that unless SBS agreed to pay them 30 per cent of the revenue we derived from being on their platform, they would exclude us entirely.