

From: s22(1)(a)(ii)
Sent: Tuesday, 19 December 2023 4:20 PM
To: Rob Nicholls
Cc: Lopez, Margaret; s22(1)(a)(ii); Gambling, Online; s22(1)(a)(ii)
Subject: RE: Request for Quote - Wagering Advertising Reforms [SEC=OFFICIAL]
Attachments: s22(1)(a)(ii)

OFFICIAL

Dear Rob,

s22(1)(a)(ii)

As mentioned below, the scope of work will include an examination of financial data provided by broadcasters (television and radio) on the revenue impacts of proposed wagering advertising reforms. Information is being sought from Channels 7, 9 and 10; SBS; Foxtel. SEN Radio. Peak bodies Free TV, Commercial Radio and Audio, and the Australian National Radio Association. Please do not hesitate to reach out if you need any further information from the Department on the scope of the work to be done to assist you in completing declaration.

s22(1)(a)(ii)

Please call me on s22(1)(a)(ii) if you wish to discuss any of the contents of this email further.

Regards,

s22(1)(a)(ii)

Director • Broadcasting and Gambling Regulation Section / Media Industry and Sustainability Branch • Online Safety, Media and Platforms Division

s22(1)(a)(ii) @infrastructure.gov.au

Ps22(1)(a)(ii) • Ms22(1)(a)(ii)

GPO Box 594 Canberra, ACT 2601

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From: Gambling, Online <Online.Gambling@communications.gov.au>
Date: Friday, 15 December 2023 at 06:43
To: Rob Nicholls <xxx@xxxxxxxxxxx.xxx>
Cc: Lopez, Margaret <[s22\(1\)\(a\)\(ii\)@communications.gov.au](mailto:s22(1)(a)(ii)@communications.gov.au)>, <[s22\(1\)\(a\)\(ii\)@INFRASTRUCTURE.gov.au](mailto:s22(1)(a)(ii)@INFRASTRUCTURE.gov.au)>, <[s22\(1\)\(a\)\(ii\)@infrastructure.gov.au](mailto:s22(1)(a)(ii)@infrastructure.gov.au)>
Subject: Request for Quote - Wagering Advertising Reforms [SEC=OFFICIAL]

OFFICIAL

Dear Dr Nicholls

The Commonwealth, as represented by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department), is seeking to procure your services to provide expert advice to the Department on the financial impacts of proposed wagering advertising reforms on television and radio. These reforms are in response to Recommendation 26 of the [House of Representatives Gambling Inquiry](#) that was released in June 2023. Required work will include analysing the data received from broadcasters on the impacts of reforms and mediating discussions if required.

We expect this contract would require up to 10 days of work commencing from early January 2024 and concluding 30 June 2024.

If you are available, we request that you please provide a quote for your services to undertake this contract in the form of your rate per day. Please provide your quote via return email by no later than **COB 19 December 2023**.

Subject to our assessment of your quote, the Department will seek to engage you consistent with the [Commonwealth Contract Terms](#).

Please call me on [s22\(1\)\(a\)\(ii\)](tel:s22(1)(a)(ii)) if you wish to discuss. Please note that I will be away this Monday, so please call Margaret Lopez (copied in) on [s22\(1\)\(a\)](tel:s22(1)(a)) if you need to discuss on Monday.

Regards,
[s22\(1\)\(a\)\(ii\)](mailto:s22(1)(a)(ii)@infrastructure.gov.au)

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From: Rob Nicholls <xxx@xxxxxxxxxxxxx.xxx>
Sent: Thursday, 1 February 2024 1:36 PM
To: Gambling, Online
Cc: Lopez, Margaret; s22(1)(a)(ii); s22(1)(a)(ii); s22(1)(a)(ii)
Subject: Re: Seeking Advice - Wagering Advertising Impacts [SEC=OFFICIAL:Sensitive]

Dear s22(1)

Many thanks for this material. I will observe strict confidentiality in respect of the documents. I am comfortable with the timing and understand the questions asked. I would also welcome further questions. I'll let you know whether another meeting would be valuable after I have reviewed the attachment that you sent. Kind regards

Rob

Dr Rob Nicholls | Principal
nicholls.mmc Pty Limited
M: +61 4 1264 6477
E: rob@nichollsmmc.com

From: Gambling, Online <Online.Gambling@communications.gov.au>
Date: Thursday, 1 February 2024 at 12:50
To: Rob Nicholls <xxx@xxxxxxxxxxxxx.xxm>
Cc: Lopez, Margaret <s22(1)(a)(ii)@communications.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>
Subject: Seeking Advice - Wagering Advertising Impacts [SEC=OFFICIAL:Sensitive]

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Hi Rob

Thank you for your time last week.

Please see **attached** the information request which was sent to the broadcasting sector in December. I have also attached the responses received to date for your review (from FreeTV; Chs7, 9 and 10; Foxtel; SBS; Commercial Radio / SCA x 2). There are 2 outstanding responses from SEN and the Australian Narrowcast Radio Association.

s47C

s47C

We are interested in seeking your views on the following:

- Overall financial and volume impacts of a **full ban** [as provided by stakeholders under **Current**] and the **various partial ban options** on TV and radio broadcasters;
- Substitution impact - s45, s47G(1)(a), s47G(1)(b) . Is this reasonable that most cannot substitute any or all of revenue from other advertisers?

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- Any other observations from the data and any further questions we should ask to further interrogate the data.

Additionally, we would like advice on the following if possible:

- Which of the restrictions will have the biggest impact on stakeholders that should be considered if a staged ban approach (i.e. over 3 years) was considered? ^{s47C}
- Standard industry contracts (duration and type) that exist between broadcasters /sports/wagering providers that need to be considered (particularly standard purchase length of television commercials)? This will inform timings and limit impacts on existing contracts.
- Any other considerations around contracts / arrangements?

We may come back with further questions.

We would appreciate if you are able to provide a written response to these questions by Friday 9 February. Once again, please note stakeholder submissions are strictly commercial in confidence, and should not be used for any purpose outside the terms of the executed contract.

Action items from Meeting 1:

- s45, s47G(1)(a), s47G(1)(b)
- Attached is a data deck summarising Neilson data that was procured by the Department. You may find this information helpful to compare this with the data from stakeholders. We are not able to share the raw data with you, but can share additional findings/extracts if there is anything you think might be relevant.

Happy to set up another meeting once you have had time to assess this request and stakeholder information. In the interim, please do feel free to come back with any queries.

Regards

s22(1)

s22(1)(a)(ii)

Director • Broadcasting and Gambling Regulation Section / Media Industry and Sustainability Branch • Online Safety, Media and Platforms Division

s22(1)(a)(ii) [@infrastructure.gov.au](mailto:infrastructure.gov.au)

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COMMERCIAL IN CONFIDENCE

1 Introduction..... 2

2 EBITDA..... 3

3 Sources of broadcasting financial data 3

Estimating Network 10’s revenue and EBITDA..... 4

Estimating BVOD spilt 5

Forward contracts..... 6

Accounting treatment..... 7

Employee costs 9

Substitution10

The responses10

4 Advice.....11

Overall financial and volume impacts of a full ban and the various partial ban options on TV and radio broadcasters11

Substitution impact – are there substitutes for wagering advertisers?12

Any other observations from the data and any further questions we should ask to further interrogate the data.....12

Which of the restrictions will have the biggest impact on stakeholders that should be considered if a three-year staged ban approach was considered? What sequencing of restrictions would minimise any required mitigation?12

What are the standard industry contracts (duration and type) that exist between broadcasters and each of sports rights holders and wagering advertisers that need to be considered (particularly standard purchase length of television commercials)?12

Any other considerations around contracts/arrangements?.....13

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COMMERCIAL IN CONFIDENCE**1 Introduction**

- 1.1 The Department of Infrastructure, Transport, Regional Development and Communications and the Arts (**Department**) has asked me, Dr Rob Nicholls of nicholls.mmc Pty Limited to provide advice on the impacts (volume and financial) of proposed wagering advertising restrictions on television, radio, and related streaming services. The proposed restrictions are in response to Recommendation 26 of the House of Representatives Inquiry into online gambling and its impacts on those experiencing gambling harm, which was handed down in June 2023. In this advice, when I refer to me, or I, I am referring to work conducted by Nicholls.
- 1.2 This advice note aims to provide advice on issues raised in an email to me from the Department date 1 February 2024.
- 1.3 The issues were:
- (a) Overall financial and volume impacts of a full ban and the various partial ban options on TV and radio broadcasters;
 - (b) Substitution impact – are there substitutes for wagering advertisers?
 - (c) Any other observations from the data and any further questions we should ask to further interrogate the data.
 - (d) Which of the restrictions will have the biggest impact on stakeholders that should be considered if a three-year staged ban approach was considered? What sequencing of restrictions would minimise any required mitigation?
 - (e) What are the standard industry contracts (duration and type) that exist between broadcasters and each of sports rights holders and wagering advertisers that need to be considered (particularly standard purchase length of television commercials)?
 - (f) Any other considerations around contracts/arrangements?
- 1.4 In December 2023, the Department issued an information request to major industry players that would be affected by a change in wagering advertising. I have been provided with this document and the responses received from:
- (a) Channel Seven;
 - (b) Channel Nine;
 - (c) Paramount Australia (Network Ten);
 - (d) SBS;
 - (e) Free TV Australia;
 - (f) Foxtel; and
 - (g) Commercial Radio Australia (two responses).
- 1.5 Each of Nine and Seven control commercial radio licences. SBS operates radio services, as well as television.
- 1.6 In order to address the issues identified by the Department, this advice note starts by looking at some of the business drivers in commercial and subscription broadcasting. These drivers are then used to answer each of the issues that are raised.

COMMERCIAL IN CONFIDENCE**2 EBITDA**

- 2.1 One useful tool in managing a business is the profit and loss line of “earnings before interest, taxation, depreciation, and amortisation” or EBITDA. The main reason for using this line is that it is an indicator of cash generation and is used as part of management accounting for the day to day running of business units.
- 2.2 EBITDA reflects the revenue less the current costs, but does not include depreciation of capital assets.
- 2.3 There is a value in considering aspects of the loss of a source of revenue. If the business has purely fixed costs, then a reduction in revenue will reduce the EBITDA by the same amount and by the same percentage. If the business has purely variable costs, then a reduction in revenue will reduce the EBITDA by the same percentage but not by the same amount.
- 2.4 In practice, most businesses have a mixture of fixed and variable costs. When revenue drops, the business reduces all of the variable costs that it can but may not be able to reduce fixed costs. The business will also seek replacement revenue for that which is lost.
- 2.5 Investors in a public company know that a reduction in EBITDA is likely to limit the cash available to that company to allocate to pay dividends. From an investment perspective, a reduction in EBITDA is more important than a reduction in revenue.
- 2.6 For this reason, this advice focusses on the EBITDA line. In any question about mitigation, the emphasis should reasonably be at either the EBITDA line or the profit and loss line of “earnings before interest and taxation” or EBIT line. Which is most important depends on the importance of capital works (for depreciation) and asset amortisation in that business.

3 Sources of broadcasting financial data

- 3.1 Although the industry responses provide information on the revenue effects of changes to wagering advertising, they do not include information on the costs associated with that revenue.
- 3.2 As a result, I have used publicly available information to estimate effects on costs. The core information is set out in Table 1.

Table 1:Source of revenue, programming costs, and EBITDA

Broadcaster	Source	URL
ABC	ABC annual report FY 2023	https://about.abc.net.au/wp-content/uploads/2023/10/Annualreport2023.pdf
Seven	Seven West Media annual report FY 2023 (Seven Report)	https://www.sevenwestmedia.com.au/assets/Uploads/Final-2023-Annual-Report.pdf and https://www.sevenwestmedia.com.au/assets/pdfs/3-Presentation-of-Year-End-Results.pdf

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Nine	Nine Entertainment Co annual report FY 2023 (Nine Report)	https://www.nineforbrands.com.au/wp-content/uploads/2023/08/NEC-2023-App4E-and-Financial-Report.pdf
Ten	Estimate	
SBS	Annual report FY 2023 (SBS Report)	https://www.sbs.com.au/aboutus/wp-content/uploads/2023/10/sbs_annual_report_2023_0.pdf
Foxtel	News Corporation full year results FY 2023 (News Report)	https://newscorp.com/wp-content/uploads/2023/08/Q4-FY2023-Earnings_FINAL_10-August-2023.pdf
SCA	SCA full year results FY 2023 (SCA Report)	https://www.southerncrossaustereo.com.au/media/4109/annual-report-2023.pdf

Estimating Network 10's revenue and EBITDA

- 3.3 Paramount Australia and New Zealand has no obligation to report its results. Its parent company in the US, Paramount, does not break out Ten's results. However, when Ten's parent was CBS/Viacom, Network Ten's results were published on a calendar year basis.
- 3.4 There are two elements in Network 10's revenue: broadcasting and BVOD. Although the programming mix of Network 10 is different to that of Seven and Nine (characterised by the absence of premium sports other than the Melbourne Cup), it would be reasonable to assume that revenue is broadly proportionate to relative viewers. This runs the risk of assuming that cost per thousand (CPM) is uniform. However, using a broad timeslot analysis reduces this effect.
- 3.5 Using the "rating year" for 2023 (which ended in the first week of December) the national and 25-54 demographic share are set out in Table 2.¹

Table 2: 2023 Rating year results broadcast TV

Network	Total share	25-54 share
Nine	27.6%	30.2%
Seven	31.1	30.1%
Network 10	16.0%	21.0%
ABC TV	16.7%	11.5%
SBS	8.6%	7.2%

- 3.6 We can now use Seven's television revenue as the basis of the estimate for Network 10. Seven's 2022/23 broadcast revenue was \$1,137,000,000. Based on the ratio of 21.0/30.1, the estimate for Network 10 would be \$793 million. This can be checked using SBS where the 2022/23 total revenue was \$172,963,000. Based on the ratio of 21.0/7.2, the estimate for Network 10 would be \$504 million. There are two other potential indicators. The first is Nine's

¹ Source: <https://tvcentral.com.au/ratings-official-oztam-survey-ratings-results-2023/> accessed 8 February 2024.

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total revenue, which was \$1,229,339,000. Based on the ratio of 21.0/30.2, the estimate for Network 10 would be \$855 million. The other is Ten’s result for calendar 2020.² This reported revenue of \$600 million. Although that year included reduced revenue due to COVID effects, each of the other broadcasters has had similar revenue in years subsequent to 2020. That is, the 2020 sales were not significantly lower than subsequent reporting years.

- 3.7 On the basis of historical results, I estimate that Network 10’s revenue in FY 2023 was \$600 million and the EBITDA was \$54 million. For Network 10, this includes BVOD in the same way that Nine’s revenue does not break out BVOD.

Estimating BVOD split

- 3.8 Seven’s annual report breaks out broadcasting and BVOD. We can use these results to estimate the split for the other networks. This is set out in Table 3.

Table 3: Estimating BVOD revenue and EBITDA split (\$,M)

	Seven			Nine			Ten			SBS		
	Total	B/cast	BVOD	Total	B/cast	BVOD	Total	B/cast	BVOD	Total	B/cast	BVOD
Revenue	\$1,316	\$1,137	\$179	\$1,229	\$1,062	\$167	\$600	\$518	\$82	\$172	\$148	\$24
EBITDA	\$260	\$126	\$134	\$320	\$155	\$165	\$54	\$26	\$28	-	-	-

- 3.9 Actual figures are shown in black, estimates are in blue.
- 3.10 This assumes that the Seven broadcasting split is replicated by the other networks. The basis that the assumption is rational is that the business models of Nine and Ten are the same as Seven. The SBS advertising sales model is also the same. The argument against this assumption is that Nine and Ten have SVOD services (Stan and Paramount+), which may mean that both revenue and EBITDA can be grouped separately.

s45, s47G(1)(a), s47G(1)(b)

Forward contracts

- 3.12 In order to be able to assess contracts that extend beyond the financial year, there are two sources of information. The first is the breakdown of programming sources for the three commercial networks. This uses ACMA data from 2021/22 (the latest available).³ This is summarised in Table 4.

² Source: <https://mumbrella.com.au/ten-reports-loss-in-2020-but-viacomcbs-committed-to-the-financial-support-696416> accessed 9 February 2024.

³ Source: <https://www.acma.gov.au/commercial-tv-program-expenditure> accessed 12 February 2024.

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Table 4: Programming genre breakdown 2021/22

Genre	Australia	Overseas	Percentage of Australian
Adult drama	\$65,006		4.22%
Children's drama	\$2,027		0.13%
Children's other	\$883		0.06%
Documentaries	\$14,886		0.97%
Light entertainment, other	\$546,457		35.46%
Light entertainment, variety	\$3,102		0.20%
News and current affairs	\$360,834		23.41%
Other programming	\$2,919		0.19%
Sport	\$544,997		35.36%
Overseas drama		\$228,411	
Overseas other		\$168,271	
TOTAL	\$1,541,111	\$396,682	

3.13 This is the source of the claim by Free TV Australia that the commercial broadcasters spend \$1.5 billion per year in Australian content.⁴

3.14 In accessing the “tail” of programming rights into the future, it is useful to consider “output deals” and sports rights. Output deals are where a broadcaster agrees to acquire all of the output of a content producer. However, over five years ago Free TV argued that there has been a shift away from output deals.⁵ Free TV describes the rationale arguing:⁶

Primarily this was due to the increased risk associated with long term and expensive output deals in an environment of declining revenues and soft consumer demand for overseas content on free-to-air television.

3.15 The second source is from the:

- (a) ABC Report;
- (b) SBS report;
- (c) Seven Report; and
- (d) Nine Report.

3.16 There are two useful indicators in these reports. The first is the accounting treatment that is used. The second is the quantum.

⁴ For example: <https://www.freetv.com.au/free-tv-calls-for-balance-in-streaming-quota-debate/> and https://www.accc.gov.au/system/files/Free%20TV_1.pdf accessed 12 February 2024.

⁵ Free TV Submission to Competitive Neutrality Inquiry, 2018 at: <https://www.freetv.com.au/wp-content/uploads/2019/07/2018-017-Free-TV-Submission-Competitive-Neutrality-Inquiry.pdf> accessed 12 February 2024.

⁶ Free TV Submission to Competitive Neutrality Inquiry, 2018 page 18.

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Accounting treatment

3.17 SBS' accounting policy in relation to program are set out on page 158 of the SBS Report. These are set out in Table 5. From the same page, SBS total program inventories are about \$104 million and annual amortisation is about \$51 million.

Table 5: SBS program rights accounting policy

Program costs are capitalised as inventory and amortised over time to reflect their expected usage. Where indications of impairment exist, the asset's recoverable amount is estimated, and an impairment adjustment is made if the asset's recoverable amount is less than its carrying amount.

Program acquisitions

Program acquisitions are amortised on a straight-line basis over the shorter of three years or licence period (for movies), or over the shorter period of two years or licence period (for documentaries and other overseas purchased programs). Online program rights are expensed as they are incurred.

Commissioned programs

Commissioned programs are valued at cost and amortised on a straight-line basis over the shorter of three years or licence period.

Some programs are fully amortised in the current period. All internally produced news and current affairs programs, as well as sports events, are expensed immediately at the time the expense is incurred.

3.18 ABC' accounting policy in relation to program are set out on page 171 of the ABC Report. These are set out in Table 6. From page 186, ABC total program inventories are about \$121 million and annual amortisation is about \$157 million (page 170).

Table 6: ABC program rights accounting policy

Amortisation of purchased programs

Purchased program inventory is amortised in accordance with the policy for amortisation of produced programs. Subsequent sales of residual rights are recognised in the period in which they occur.

Amortisation of produced programs

The cost of produced television program inventory is amortised as follows:

- Live Programs, Factual and Entertainment programs based on current topics — 100% on first screening;
- Children's Education and Movies — straight-line over three years from completion of production;
- ABC iView-only programs — 100% on first release; and
- Programs not covered above — 100% on first screening.

In addition to the above, programs that are assessed as no longer having any service potential are 100% expensed at the time of the assessment. The costs of News, Radio and ABC International programs are expensed as incurred. Such programs are normally broadcast soon after production and stock on hand is minimal at any point in time.

Inventories

Inventories held for resale are valued at the lower of cost and net realisable value. Inventories not held for resale are valued at the lower of cost, adjusted for any loss in service potential, identified and measured based on the existence of a current replacement cost that is lower than the original acquisition cost or other subsequent carrying amount.

3.19 Seven's accounting policy in relation to program are set out on pages 84 and 85 of the Seven Report. These are set out in Table 7. From page 71, Seven total program inventories are about

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\$177 million and annual amortisation is about \$98 million (page 84). The program rights cost (after amortisation) were about \$611 million (page 79).

Table 7: Seven's program rights accounting policy

<p>Program rights</p> <p>Program rights includes both purchased rights and produced programs. Program rights are recognised at the earlier of when cash payments are made or from the commencement of the rights period of the contract. Television program rights are carried at the lower of cost less amortisation and net recoverable amount. Cost comprises acquisition of program rights and, for programs produced using the Group's facilities, direct labour and materials and directly attributable fixed and variable overheads. The Group's amortisation policy requires the amortisation of purchased programs on a straight line basis over the expected useful life. The useful life of purchased programs is assessed at least annually. Produced programs are expensed when broadcast.</p> <p>Inventories</p> <p>Inventories, which includes newsprint, paper, finished goods, raw material and work in progress, are measured at the lower of acquisition cost, cost of manufacturing or net realisable value. The net realisable value is the estimated achievable selling price in the ordinary course of business less the estimated costs through to completion and the estimated necessary selling costs.</p> <p>Television program liabilities</p> <p>Television program liabilities are recognised from the commencement of the rights period of the contract. Contract payments made prior to commencement of the rights period are included in television program rights and inventories as prepaid program rights and not included in program liabilities.</p>

- 3.20 Nine's accounting policy in relation to program are set out on page 171 of the Nine Report. These are set out in Table 8. From page 36, Nine total program inventories are about \$299 million (current) and \$154 million (non-current) annual amortisation is about \$156 million (page 44). The program rights cost (after amortisation) were about \$661 million (page 44).

Table 8: Nine's program rights accounting policy

<p>Program Rights</p> <p>The Group recognises program rights which are available for use. Programs which are available for use, including those acquired overseas, are recorded at cost less amounts charged to the Statement of Profit or Loss and Other Comprehensive Income based on the transmission and useful life of the content and management's assessment of the future years of benefit, which is regularly reviewed with additional write-downs made as considered necessary. Program rights are classified as current or non-current based on the expected realisation of economic benefits flowing from their use.</p> <p>Inventories</p> <p>Inventories are carried at lower of cost or net realisable value ("NRV"). The NRV is the estimated future net cash inflows in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.</p> <p>Key judgements, estimates and assumptions</p> <p>The assessment of the appropriate carrying value of program rights and inventories requires estimation by management of the forecast future cash flows which will be derived from that content. This estimate is based on a combination of market conditions and the value generated from the broadcast of comparable programs. Due to the uncertainties in estimating forecast future cash flows, changes in economic and market conditions could result in changes in the carrying value in future periods.</p>
--

- 3.21 One issue that flows from all of the reports of advertisers is the absence of non-current items. That is, there are no non-current trade receivables. That is, advertising revenue is recognised when the advertisement is invoiced. The effect of this is that neither Seven nor Nine indicate that there are long-term contracts with advertisers.

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- 3.22 SCA has audio revenue of (SCA Report page 63) about \$397 million and EBITDA of about \$78 million.

Employee costs

- 3.23 One aspect of the cost base of a business that is variable is the employee costs. That is, a business is able to scale the number and cost of employees to reflect business conditions. There are potential costs of redundancies with such changes. Also, employee provisions are included in the accounts but crystallise when an employee leaves the business. Redundancy costs and payment of employee provisions require the ability to fund a short-term cash flow requirement.

Table 9: Employment costs as a proportion of revenue (\$,000)

Network	Employee Costs	Revenue	% of revenue
SBS	\$180,576	\$520,173	34.71%
Seven (estimate)	\$291,906	\$1,316,000	22.18%
Nine (estimate)	\$352,203	\$1,229,339	28.65%
Ten (estimate)	\$161,412	\$600,000	26.90%
SCA (estimate)	\$159,960	\$397,196	40.27%

- 3.24 The Seven estimate assumes that the proportion of employees associated with broadcasting revenue is the same as the proportion of broadcasting revenue to total revenue. That is, employee expenses are \$330 million and the proportion of broadcasting revenue to total revenue is 88.5% yielding \$292 million.
- 3.25 The Nine estimate assumes that the proportion of employees associated with broadcasting revenue is the same as the proportion of broadcasting revenue to total revenue. That is, employee expenses are \$771 million and the proportion of broadcasting revenue to total revenue is 45.3% yielding \$352 million.
- 3.26 The Ten estimate uses the percentage revenue of each of SBS, Seven, and Nine weighted by their respective revenue.
- 3.27 The SCA estimate assumes that employee costs as a proportion of revenue are consistent across audio and television.

Substitution

- 3.28 In any business, if a revenue stream is lost, then the business must either replace that revenue stream or reduce its costs. In the case of advertising, there is the potential for substitution of lost advertising revenue using advertising revenue at a lower CPM. The pricing of advertising is highest for specific viewers. For example, programmatic advertising for placement at a point when a wagering decision or wagering platform decision is likely will be significantly higher than run-of-station advertising in a variety of programming.
- 3.29 This means that substitution is always likely to be possible, but the associated revenues may not support the cost structure associated with premium advertising sales.

COMMERCIAL IN CONFIDENCE

The responses

s45, s47G(1)(a), s47G(1)(b)



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Pages 17-19 removed in their entirety as exempt under sections 45, 47G(1)(a) and 47G(1)(b) of the FOI Act.

From: Rob Nicholls <xxx@xxxxxxxxxxxxxxx>
Sent: Monday, 22 April 2024 4:50 PM
To: s22(1)(a)(ii); Gambling, Online
Cc: Lopez, Margaret; s22(1)(a)(ii); s22(1)(a)(ii); s22(1)(a)(ii); Gambling, Online
Subject: Re: Broadcasters discussions - Wagering Advertising Commercial in Confidence [SEC=OFFICIAL]

s22(1)

Now that I have the confirmation email from s47F I should provide you with an update. I will get a draft of my report on the two specific matters (substitution and timing) and the “regulatory event” to you by close of business tomorrow.
Kind regards

Rob

Dr Rob Nicholls | Principal
nicholls.mmc Pty Limited
M: +61 4 1264 6477
E: rob@nichollsmmc.com

From: s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>
Date: Friday, 19 April 2024 at 14:29
To: Rob Nicholls <xxx@xxxxxxxxxxxxxxx>, Gambling, Online <Online.Gambling@communications.gov.au>
Cc: Lopez, Margaret <s22(1)(a)(ii)@communications.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>, Gambling, Online <Online.Gambling@communications.gov.au>
Subject: RE: Broadcasters discussions - Wagering Advertising Commercial in Confidence [SEC=OFFICIAL]

OFFICIAL

Hi Rob

Good to know. Thank you.

I will pass onto the MO.

Regards
s22(1)

OFFICIAL

From: Rob Nicholls <rob@nichollsmmc.com>
Sent: Friday, 19 April 2024 1:10 PM
To: s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; Gambling, Online <Online.Gambling@communications.gov.au>
Cc: Lopez, Margaret <s22(1)(a)(ii)@communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; Gambling, Online <Online.Gambling@communications.gov.au>
Subject: Re: Broadcasters discussions - Wagering Advertising Commercial in Confidence [SEC=OFFICIAL]

s22(1)

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s45, s47G(1)(a), s47G(1)(b)

Kind regards

Rob

Dr Rob Nicholls | Principal
nicholls.mmc Pty Limited
M: +61 4 1264 6477
E: rob@nichollsmmc.com

From: s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>
Date: Thursday, 18 April 2024 at 09:17
To: Rob Nicholls <rob@nichollsmmc.com>, Gambling, Online <Online.Gambling@communications.gov.au>
Cc: Lopez, Margaret <s22(1)(a)(ii)@communications.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>, Gambling, Online <Online.Gambling@communications.gov.au>
Subject: RE: Broadcasters discussions - Wagering Advertising Commercial in Confidence [SEC=OFFICIAL]

OFFICIAL

Hi Rob

Thank you. Appreciate you asking for us.

We can pass that onto the Minister's office.

Regards

s22(1)(a)(ii)

s22(1)(a)(ii)

Director • Broadcasting and Gambling Regulation Section / Media Industry and Sustainability Branch • Online Safety, Media and Platforms Division

s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@infrastructure.gov.au](mailto:s22(1)(a)(ii)@infrastructure.gov.au)>

Ps22(1)(a)(ii) • Ms22(1)(a)(ii)

GPO Box 594 Canberra, ACT 2601

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I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

OFFICIAL

From: Rob Nicholls <rob@nichollsmmc.com>
Sent: Thursday, 18 April 2024 9:16 AM
To: Gambling, Online <Online.Gambling@communications.gov.au>
Cc: Lopez, Margaret <s22(1)(a)(ii)@communications.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; Gambling, Online

<Online.Gambling@communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii) @INFRASTRUCTURE.gov.au>
Subject: Re: Broadcasters discussions - Wagering Advertising Commercial in Confidence [SEC=OFFICIAL]

s22(1)
s45, s47G(1)(a), s47G(1)(b)

However, I will let you know as soon as I hear.
Kind regards

Rob

Dr Rob Nicholls | Principal
nicholls.mmc Pty Limited
M: +61 4 1264 6477
E: rob@nichollsmmc.com

From: Gambling, Online <Online.Gambling@communications.gov.au>
Date: Tuesday, 16 April 2024 at 17:07
To: Rob Nicholls <rob@nichollsmmc.com>, Gambling, Online <Online.Gambling@communications.gov.au>
Cc: Lopez, Margaret <s22(1)(a)(ii) @communications.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii) @INFRASTRUCTURE.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii) @infrastructure.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii) @infrastructure.gov.au>, Gambling, Online <Online.Gambling@communications.gov.au>, s22(1)(a)(ii) <s22(1)(a)(ii) @INFRASTRUCTURE.gov.au>
Subject: RE: Broadcasters discussions - Wagering Advertising Commercial in Confidence [SEC=OFFICIAL]

OFFICIAL

Hi Rob,

Thank you for coming back on this. s45, s47G(1)(a), s47G(1)(b)

s45, s47G(1)(a), s47G(1)(b)

Happy for you to use the time to write up your findings. We can then discuss once you have provided your brief to us.

Regards
s22(1)

s22(1)(a)(ii)
Director • Broadcasting and Gambling Regulation Section / Media Industry and Sustainability Branch • Online Safety, Media and Platforms Division
s22(1)(a)(ii) @infrastructure.gov.au
P s22(1)(a)(ii) • M s22(1)(a)(ii)
GPO Box 594 Canberra, ACT 2601

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OFFICIAL

From: Rob Nicholls <rob@nichollsmmc.com>
Sent: Tuesday, 16 April 2024 4:16 PM
To: Gambling, Online <Online.Gambling@communications.gov.au>
Cc: Lopez, Margaret <[s22\(1\)\(a\)\(ii\)@communications.gov.au](mailto:s22(1)(a)(ii)@communications.gov.au)>; <[s22\(1\)\(a\)\(ii\)@INFRASTRUCTURE.gov.au](mailto:s22(1)(a)(ii)@INFRASTRUCTURE.gov.au)>; <[s22\(1\)\(a\)\(ii\)@infrastructure.gov.au](mailto:s22(1)(a)(ii)@infrastructure.gov.au)>; <[s22\(1\)\(a\)\(ii\)@infrastructure.gov.au](mailto:s22(1)(a)(ii)@infrastructure.gov.au)>; Gambling, Online <Online.Gambling@communications.gov.au>
Subject: Re: Broadcasters discussions - Wagering Advertising [SEC=OFFICIAL] Commercial in Confidence

s22(1)
(s45, s47G(1)(a), s47G(1)(b))

I'm currently writing up my findings. However, if a video conference for me to go through the key issues before a written report would be valuable, we could schedule one for tomorrow at any time.

s45, s47G(1)(a), s47G(1)(b)

Kind regards

Rob

Dr Rob Nicholls | Principal
nicholls.mmc Pty Limited
M: +61 4 1264 6477
E: rob@nichollsmmc.com

From: Gambling, Online <Online.Gamblix@xxxxxxxxxxxxxxx.xxx.au>
Date: Tuesday, 16 April 2024 at 15:58
To: Rob Nicholls <xxx@xxxxxxxxxxxxxxx.xxm>
Cc: Lopez, Margaret <[s22\(1\)\(a\)\(ii\)@communications.gov.au](mailto:s22(1)(a)(ii)@communications.gov.au)>; <[s22\(1\)\(a\)\(ii\)@INFRASTRUCTURE.gov.au](mailto:s22(1)(a)(ii)@INFRASTRUCTURE.gov.au)>; <[s22\(1\)\(a\)\(ii\)@infrastructure.gov.au](mailto:s22(1)(a)(ii)@infrastructure.gov.au)>; <[s22\(1\)\(a\)\(ii\)@infrastructure.gov.au](mailto:s22(1)(a)(ii)@infrastructure.gov.au)>; Gambling, Online <Online.Gambling@communications.gov.au>
Subject: RE: Broadcasters discussions - Wagering Advertising [SEC=OFFICIAL]

OFFICIAL

Hi Rob,

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s47C

Can you confirm whether this came up in your conversations with the broadcasters to date? If not, would it be at all possible for you to reach out to Seven, Nine and Foxtel to ask about any such clauses?

Regards,
s22(1)

s22(1)(a)(ii)

Director • Broadcasting and Gambling Regulation Section / Media Industry and Sustainability Branch • Online Safety, Media and Platforms Division

s22(1)(a)(ii) [@infrastructure.gov.au](mailto:infrastructure.gov.au)

Ps22(1)(a)(ii) • Ms22(1)(a)(ii)

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I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

OFFICIAL

From: Rob Nicholls <rob@nichollsmmc.com>

Sent: Thursday, 11 April 2024 5:09 PM

To: Gambling, Online <Online.Gambling@communications.gov.au>

Cc: Lopez, Margaret <s22(1)(a)(ii)@communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>

Subject: Re: Broadcasters discussions - Wagering Advertising [SEC=OFFICIAL]

s22(1)

I have had meetings with Seven, Nine, Ten, Foxtel, and CRA. I have meetings tomorrow with SBS and Free TV. I would prefer to present the whole picture next week, but I can give you a call tomorrow after 10:00 (the SBS meeting is at 9:00), if that would be helpful.

Kind regards

Rob

Dr Rob Nicholls

+61 4 1264 6477

From: Gambling, Online <Online.Gambling@communications.gov.au>

Sent: Thursday, April 11, 2024 5:00:22 PM

To: Rob Nicholls <rob@nichollsmmc.com>; Gambling, Online <Online.Gambling@communications.gov.au>

Cc: Lopez, Margaret <s22(1)(a)(ii)@communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>

Subject: RE: Broadcasters discussions - Wagering Advertising [SEC=OFFICIAL]

OFFICIAL

Hi Rob

We have our weekly meeting with the Minister's office tomorrow.

Just wondering if you were able to provide us any update on your discussions that we could share with them?

Regards

s22(1)

s22(1)(a)(ii)

Director • Broadcasting and Gambling Regulation Section / Media Industry and Sustainability Branch • Online Safety, Media and Platforms Division

s22(1)(a)(ii) @infrastructure.gov.au

Ps22(1)(a)(ii) • Ms22(1)(a)(ii)

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I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

OFFICIAL

From: Rob Nicholls <rob@nichollsmmc.com>

Sent: Thursday, 4 April 2024 12:50 PM

To: Gambling, Online <Online.Gambling@communications.gov.au>

Cc: Lopez, Margaret <s22(1)(a)(ii) @communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii) @INFRASTRUCTURE.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii) @infrastructure.gov.au>;

s22(1)(a)(ii) <s22(1)(a)(ii) @infrastructure.gov.au>

Subject: Re: Broadcasters discussions - Wagering Advertising [SEC=OFFICIAL]

s22(1)

Will do.

I'm also meeting with Foxtel on Tuesday.

Kind regards

Rob

Dr Rob Nicholls

+61 4 1264 6477

From: Gambling, Online <Online.Gambling@communications.gov.au>

Sent: Thursday, April 4, 2024 12:43:26 PM

To: Rob Nicholls <rob@nichollsmmc.com>; Gambling, Online <Online.Gambling@communications.gov.au>

Cc: Lopez, Margaret <s22(1)(a)(ii) @communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii) @INFRASTRUCTURE.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii) @infrastructure.gov.au>;

s22(1)(a)(ii) <s22(1)(a)(ii) @infrastructure.gov.au>

Subject: RE: Broadcasters discussions - Wagering Advertising [SEC=OFFICIAL]

OFFICIAL

Hi Rob,

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Thanks for the update. Good to see most of the meetings have been locked in.

s45, s47G(1)(a), s47G(1)(b)

Regards

s22(1)

s22(1)(a)(ii)

Director • Broadcasting and Gambling Regulation Section / Media Industry and Sustainability Branch • Online Safety, Media and Platforms Division

s22(1)(a)(ii) @infrastructure.gov.au

Ms22(1)(a)(ii) • Ms22(1)(a)(ii)

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OFFICIAL

From: Rob Nicholls <rob@nichollsmmc.com>

Sent: Thursday, 4 April 2024 10:14 AM

To: Gambling, Online <Online.Gambling@communications.gov.au>

Cc: Lopez, Margaret <s22(1)(a)(ii)@communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>

Subject: Re: Broadcasters discussions - Wagering Advertising [SEC=OFFICIAL]

Dear s22(1)

I thought that it would be useful to provide an update.

I have been in touch with all of the stakeholders and all have acknowledged.

I have meetings scheduled as follows:

5 April: Nine

5 April: CRA

10 April: Seven

12 April: SBS

I expect to be able to let you know when I will catch up with each of Ten and Foxtel in the next day .

Free TV Australia has offer to have a catch up after I have had discussions with each of their members. This will be with s47F as s47F will be on leave.

Kind regards

Rob

Dr Rob Nicholls | Principal
 nicholls.mmc Pty Limited

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Commercial in Confidence


1	INTRODUCTION	2
2	SUMMARY OF MESSAGES HEARD	3
3	REVIEW OF MESSAGES HEARD	3

s45, s47G(1)(a), s47G(1)(b)



4	COSTS AND COST STRUCTURES	10
----------	----------------------------------	-----------

s45, s47G(1)(a), s47G(1)(b)



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Commercial in Confidence

1 INTRODUCTION

I was asked to reach out to broadcasters to further interrogate their positions in relation to the substitution of wagering advertisements. I was also invited to ask any questions relating to their submissions arising from my earlier report to the Department. In particular, I was asked to consider timing issues, especially those associated with the length of advertising/sponsorship contracts with wagering advertisers.

Separately, an issue was identified for consideration. This was the question as to whether sports rights agreements include a provision that allows for termination by the broadcast as a result of the change of law or regulation. In other environments, such a clause would be called a “regulatory event” clause or a “change of law” clause. The effect of such a provision would be that the broadcaster could terminate a sports right agreement if they were no longer permitted to carry wagering advertising as they currently do. The scope of this inquiry was limited to AFL, NRL, and cricket rights which meant inquiries of Seven, Nine, and Foxtel.

In order to address these issues, I met with broadcasters as set out in . I addressed the “regulatory events” clause issue using email and text. This is also set out in .

Table 1: Meetings and communications with broadcasters

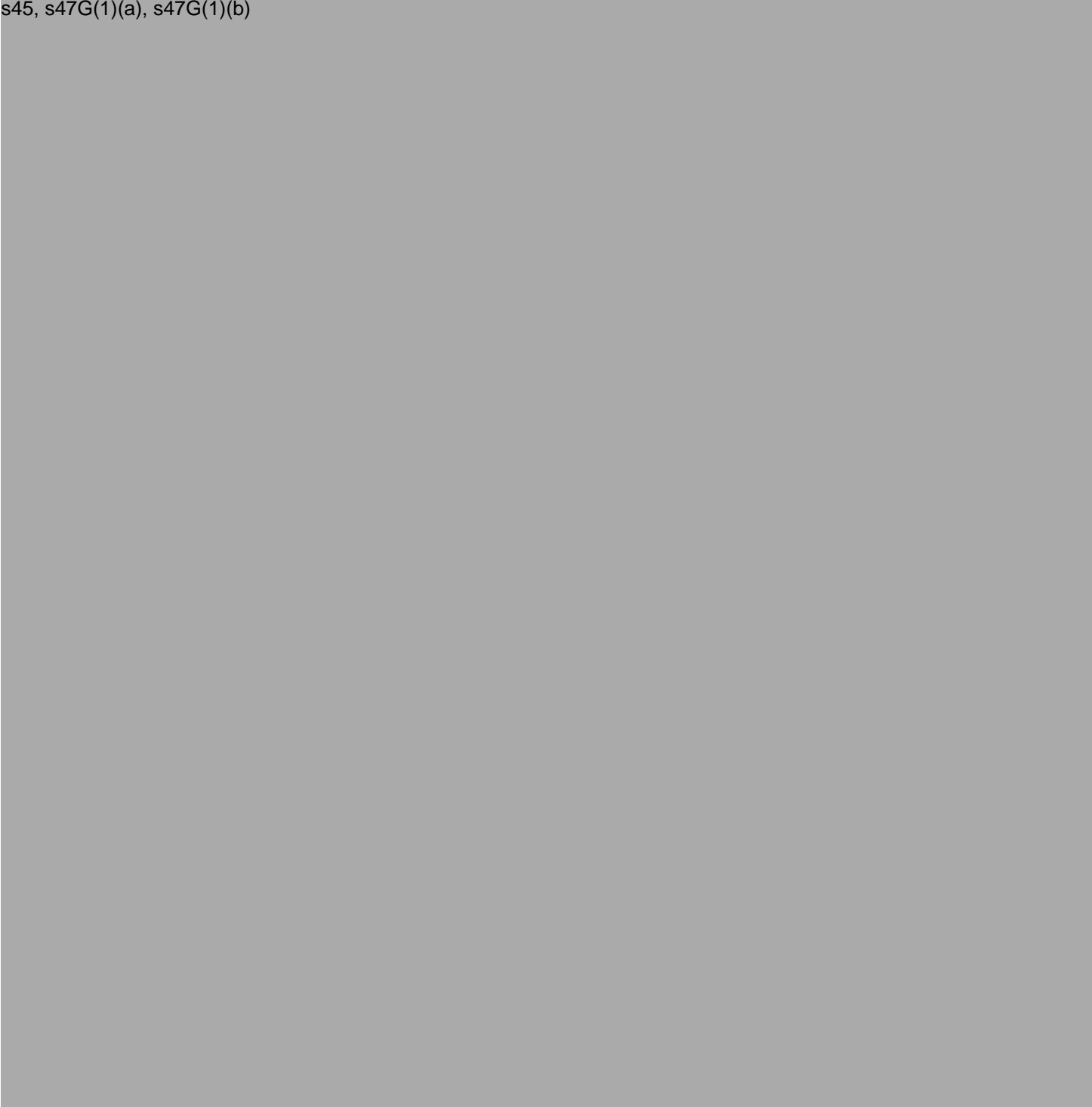
Organisation	Date in 2024	People	Follow-up on rights issue in 2024	Reply
Seven	10 April	s47F	16 April	17 April
Nine	5 April		16 April	17 April
Ten	10 April		N/A	N/A
SBS	12 April		N/A	N/A
Foxtel	9 April		16 April	22 April
FreeTV Australia	12 April		N/A	N/A
Commercial Radio and Audio (CRA)	5 April		N/A	N/A

Commercial in Confidence

My line of inquiry on substitution was to try to draw out the business effect of the position that there is either no, or limited substitution for wagering advertising. That is, a focus less on the loss of revenue, but effect at a profit line. The profit line to which I drew attention was Earnings Before Interest, Depreciation, and Amortisation (EBITDA). The rationale for this is that EBITDA is a good indication of “free cash” generated by a business. This is an important metric for privately held businesses and businesses which are operated as strategic business units in an entity with multiple lines of business. It is also an issue that I raised in my first report.

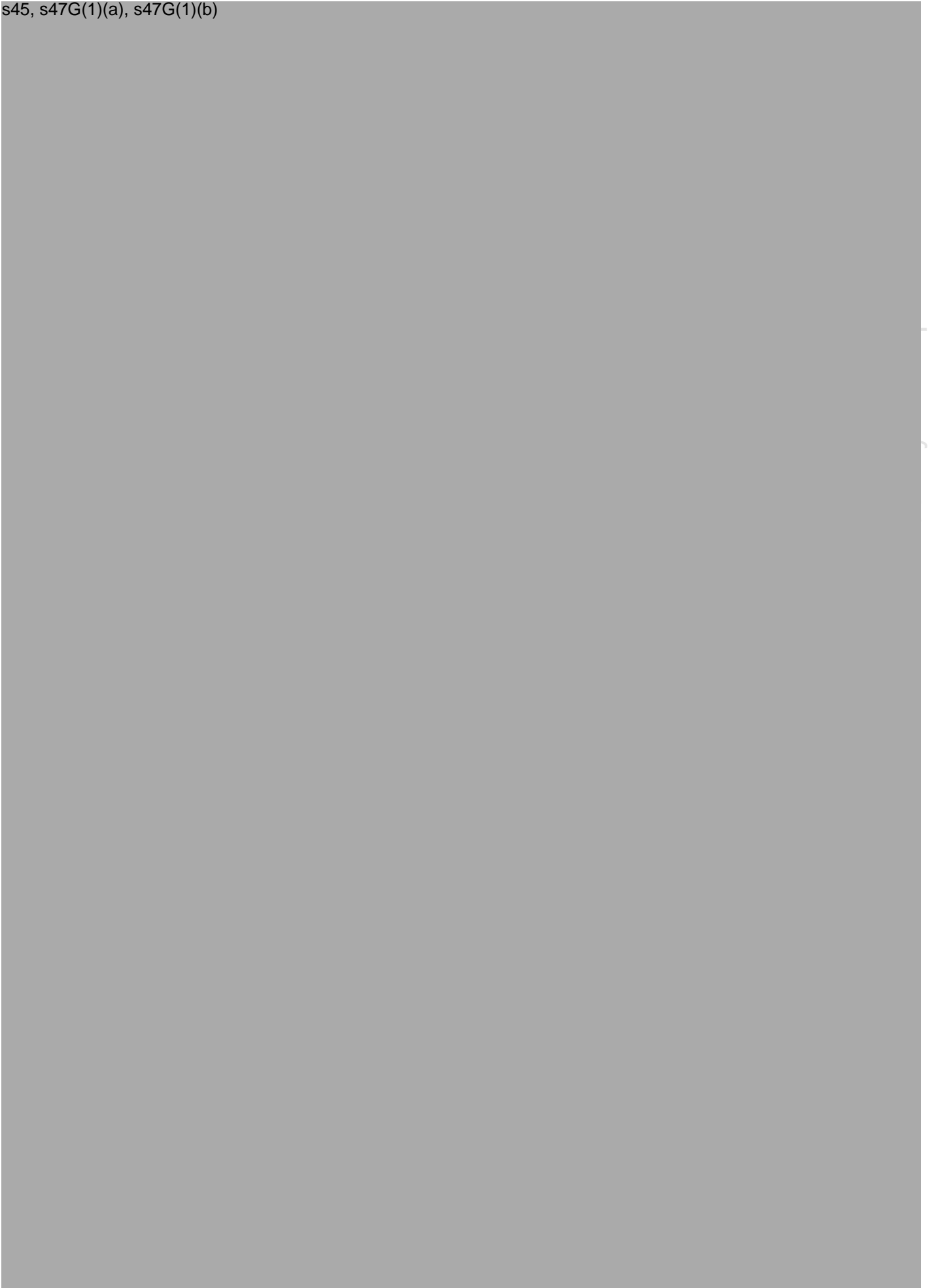
This report begins by presenting a summary of the key messages that I heard from the broadcasters in my discussions. My focus here is on common issues, rather than those specific to each broadcaster. I then turn to a review of each of those key messages and draw out any differences between broadcasters. Finally, I present some conclusions.

s45, s47G(1)(a), s47G(1)(b)



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s45, s47G(1)(a), s47G(1)(b)



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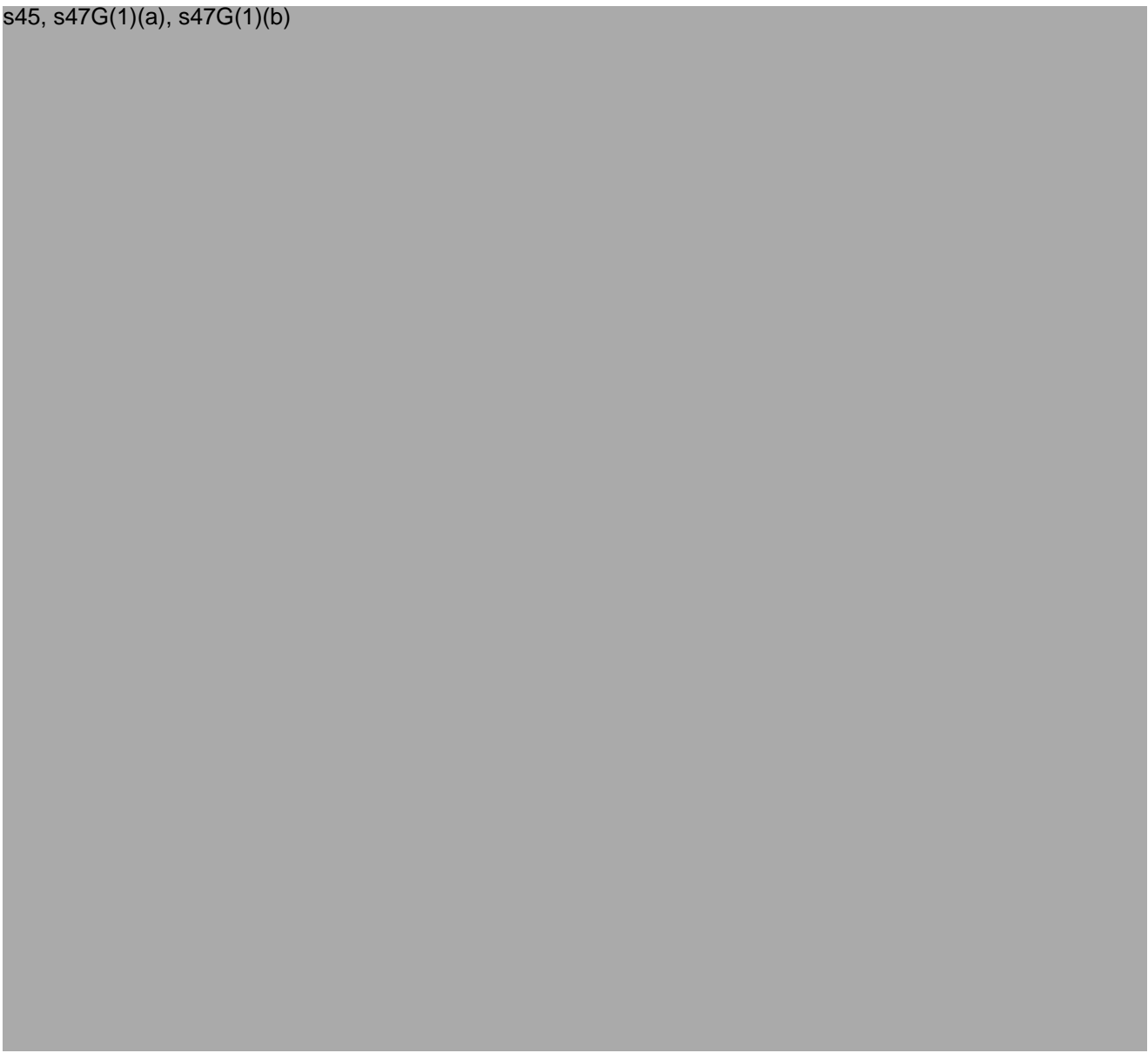
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s45, s47G(1)(a), s47G(1)(b)



There is some support for this position from Standard Media Index Australia (SMI), which publishes monthly advertising spend trends. In February, this showed a decline in television (-12.9%) and radio (-5.9%) advertising.¹


s45, s47G(1)(a), s47G(1)(b)



¹ <https://www.adnews.com.au/news/smi-february-ad-spend-down-6>

Commercial in Confidence

s45, s47G(1)(a), s47G(1)(b)




s45, s47G(1)(a), s47G(1)(b)

The relevant SMI report indicates a fall of 50% in government advertising in early 2023.² By the end of 2023, this was confirmed as a drop of \$100 million on a comparison of calendar year basis.³


The effect of the decline in government advertising is that government advertising is not a replacement category.

s45, s47G(1)(a), s47G(1)(b)



Although Disney+ does not currently carry advertising in Australia, “Disney+ Standard with Ads” is the advertising supported tier in Europe.⁴

s45, s47G(1)(a), s47G(1)(b)




² <https://www.mediaweek.com.au/smi-february-2023-yoy-decline-due-to-govt-ad-spend-outdoor-cinema-climb/>

³ <https://www.mi-3.com.au/06-02-2024/smi-ad-spend-trends-2023-december-back-91-100m-government-spending-withers-2023-cy-27>

⁴ <https://press.disney.co.uk/news/disney+-to-launch-an-ad-supported-subscription-plan-on-november-1-in-europe>




Commercial in Confidence

s45, s47G(1)(a), s47G(1)(b)




3.8 Sports rights contract obligations

s45, s47G(1)(a), s47G(1)(b)



SportsBet is the partner for each of the AFL and NRL and their associated sports rights. Bet365 is the “gold” partner for Cricket Australia.⁵

s45, s47G(1)(a), s47G(1)(b)



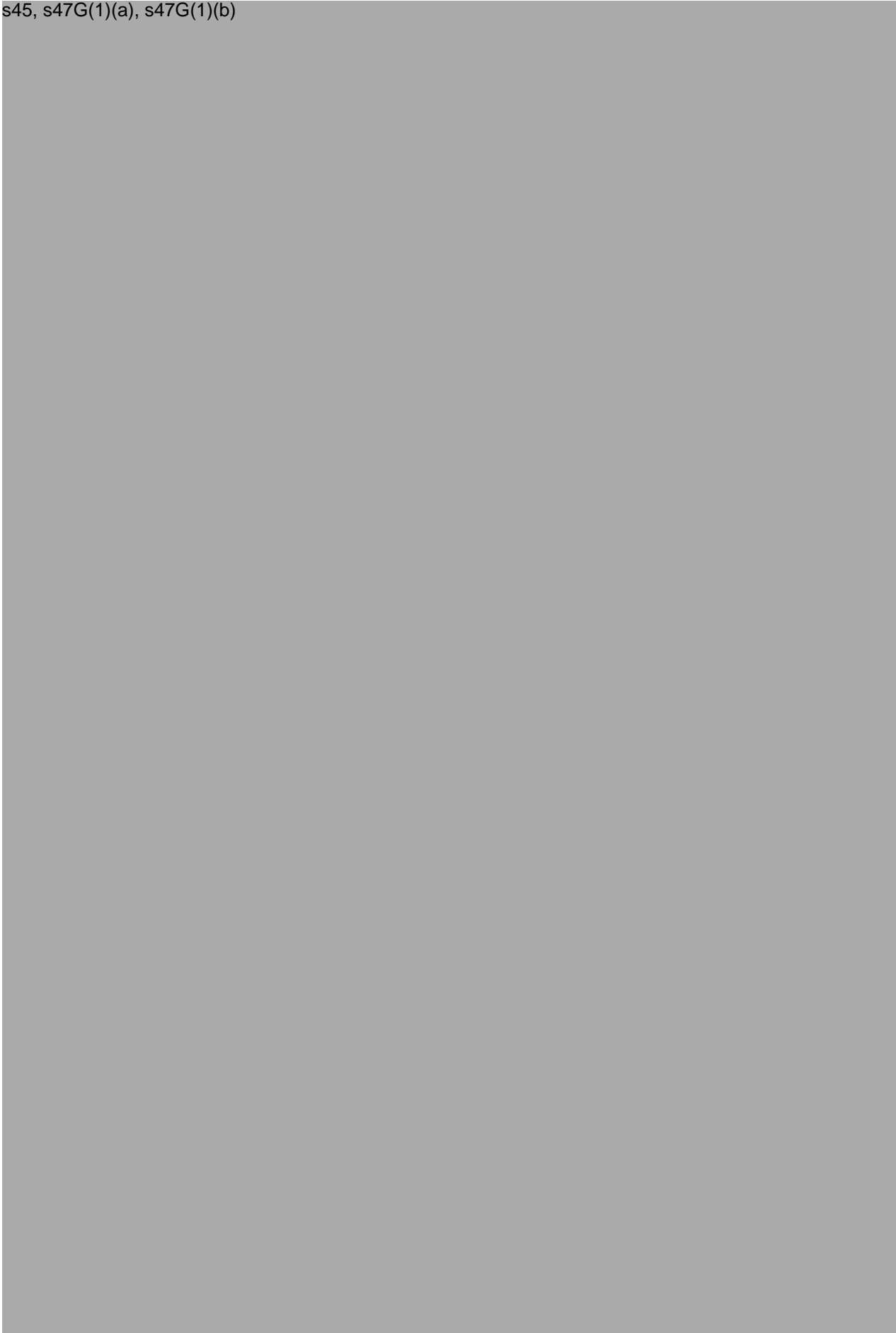
⁵ <https://www.cricket.com.au/our-partners/our-commercial-partners>

⁶ <https://www.cricket.com.au/news/3807634/amazon-prime-video-secures-icc-broadcast-rights-in-australia-t20-odi-world-cup-world-test-championship-2024-27>

⁷ <https://frontofficesports.com/netflix-gets-its-live-sports-deal-with-wwes-flagship-show-raw/>

Commercial in Confidence


s45, s47G(1)(a), s47G(1)(b)










Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Commercial in Confidence

s45, s47G(1)(a), s47G(1)(b)




s45, s47G(1)(a), s47G(1)(b)



This problem with frequency capping has been identified by others as being problematic in Australia.⁸ s45, s47G(1)(a), s47G(1)(b)

s45, s47G(1)(a), s47G(1)(b)



⁸ <https://www.mi-3.com.au/14-03-2024/pressure-coming-them-huge-market-cant-sustain-four-networks-marketers-pull-few-punches>

Pages 39-41 removed in their entirety as exempt under sections 45, 47G(1)(a) and 47G(1)(b) of the FOI Act.