



MEDIA GROUP

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Australian Competition and Consumer
Commission

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5 June 2020

MANDATORY NEWS MEDIA BARGAINING CODE

Dear Commission

Bauer appreciates the opportunity to provide written submissions in relation to the proposed mandatory code of conduct to address bargaining power imbalances between Australian news media businesses and digital platforms (**Code**). This submission expands upon the matters raised by Bauer with the Commission in the meeting between it and Sarah-Belle Murphy and myself on 28 May 2020.

In preparing this submission, Bauer has had regard to the concepts paper issued by the Commission on 19 May 2020 (**Concepts Paper**). Bauer principally wishes to address the scope of news content that will be subject to the Code. The Commission has recognised this as an important threshold issue. To that end, this submission will principally address the first three questions identified in the concepts paper.

Introduction to Bauer

Bauer is Australia's leading multi-platform publisher, with investments spanning magazines, digital and live experiences. The portfolio includes some of the country's longest-running and most successful brands. From a digital perspective, Bauer operates under a number of digital-only brands, including *Now to Love*, *Homes to Love* and *Food to Love*, *BeautyHeaven*, *BeautyCrew*, *Syrup* and *Allrecipes.com*. In addition, Bauer's traditionally print brands – such as *The Australian Women's Weekly*, *Woman's Day*, *Marie Claire*, *Harpers Bazaar*, *Elle*, *InStyle*, *Better Homes & Gardens*, *Australian House & Garden* and *Belle* – have significant digital presences across websites and social media.



Bauer employs approximately 700 staff in Australia, of whom approximately 260 are in content creation roles. Of those 260, approximately 55 (or 20%) are focussed on content creation for digital platforms. In addition to its employed staff, Bauer engages numerous freelance content creators across its brands.

Scope of news content

Bauer considers that the scope of news content for the purposes of the Code should be drawn broadly for five reasons.

- 1. A broad definition of “news” is consistent with reality of Australian news media business

Drawing the scope of news content broadly reflects the reality of news media businesses in Australia. Such businesses cover a broad range of content, in an intermingled fashion, ranging from “serious” journalism to “softer” reporting of lifestyle, celebrity and human interest stories. That is, all Australian news media organisations exist at the intersection of traditional journalism and entertainment. This is particularly true for those organisations’ digital operations because (ignoring pay wall arrangements) revenue is almost entirely driven by advertising and, hence, audience size.

Even a cursory look at the websites of news.com.au or The Guardian Australia - organisations more traditionally associated with “serious” journalism - demonstrates this point. The following table sets out the content that is covered by a number of prominent Australian sties that form part of Australia’s digital news media landscape.

Online	Celebrity	Royals	Real Life	Food	Fashion Beauty	Health	Lifestyle	Travel	Puzzle	TV
SHM.com.au	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓
Daily Mail	✓	✓	✗	✓	✓	✓	✗	✓	✗	✓
MSN Australia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗
Nine.com.au	✓	✓	✓	✓	✓	✗	✗	✓	✓	✓
News.com.au	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓



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3/5

Indeed, the amount of “soft” news content produced by Australia’s major news media organisations arguably far outweighs the “serious” news content they produce. Accordingly, there is a real danger that, if the scope of news content is drawn narrowly, the Code will be a white elephant that operates in respect of a relatively small volume of digital content.

2. Soft journalism funds serious reporting

Importantly, the “soft” news content often funds the production of the more “serious” news content. If the Code fails to adequately protect the commercial value of that “softer” news content, the business models that support more serious journalism will continue to fail.

3. The ACCC shouldn’t seek to make value judgements about the quality of news content

The ACCC is, ultimately, a competition regulator. In this regard, it is telling that the government has entrusted the development of the Code to the ACCC and not to the ACMA. The ACCC should not become an arbiter for the inherently subjective judgement as to whether “news” is sufficiently meritorious to warrant the protection of the Code. The imbalances of bargaining power that the Code seeks to address operate on a content-neutral basis. Therefore, to the extent possible – having regard to the Commission’s terms of reference – the Code should operate on a content neutral basis.

In particular, the notion of what is in the “public interest” is notoriously hard to define, especially in the context of journalism. The Concepts Paper properly identifies that concept as being too narrow for the purposes of the Code.

4. A narrow definition of “news” risks creating an uneven playing field

All media organisations compete against each other for audience and advertising revenue. There is a danger that applying a narrow definition of “news” creates winners and losers from the Code and, therefore, an uneven playing field.

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4/5

5. A broad definition of “news” is consistent with the approach of the digital platforms

The digital platforms themselves take a very broad view of what constitutes “news”. This is perhaps most obviously illustrated in the Facebook news feed, which incorporates an almost limitless array of content.

This approach is also well illustrated in the Google News platform. That platform advertises itself to users as a “news” platform. It is, however, open to all publishers as long as they meet the Google News Content Policies. Google describes Google News as a platform to:

Discover current events, world-wide news, and diverse content from different publishers.

Currently, Bauer feeds entertainment, lifestyle, fashion, homes and food content into Google News (and the traffic derived from doing so is material to the financial viability of Bauer’s digital business).

The role of “professionalism” in defining news content

To address a specific question posed by in the Concepts Paper, Bauer considers that “professionalism” is a useful reference point in determining the content that falls within and outside the Code. In particular, the definition of “news content” should require that content is produced by professional journalists, or published by a professional news media business.

In this regard, the ACC has suggested a number of potential criteria for assessing “professionalism”. Bauer’s view is that any relevant criteria hurdle needs to be meaningful. Clearly membership of the Australian Press Council is meaningful, entailing a significant cost for an organisation. However, query whether other criteria suggested by the ACCC are meaningful. In particular:

- a person can become a member of the MEAA for as little as \$377 per year; and
- there is almost no obstacle to an organisation “adhering to and publishing an internal journalistic standard.”

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5/5

By way of a concluding remark, Bauer notes that the Commission should, in developing and implementing the Code, ensure that the Code's existence does not place Australian news media businesses at a competitive disadvantage to news media businesses in other jurisdictions. Google and Facebook are critical to the financial viability of Australian news media businesses. To the extent that the existence of the Code caused Google or Facebook to overtly or implicitly preference foreign news media businesses – operating without the benefit of the Code – over Australian news media businesses, the consequence for those Australian news media businesses would be severe.

Bauer thanks the Commission for the opportunity to make this submission and would be pleased to further discuss the matter with the Commission.

Yours sincerely

A handwritten signature in black ink, appearing to read "Adrian Goss".

Adrian Goss
General Counsel

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