

Broadsheet Media

**Submission to the Australian Competition and Consumer
Commission**

**Draft News Media and Digital Platforms Mandatory
Bargaining Code**

28 August 2020

Introduction

Broadsheet Media supports the proposed enforceable code of conduct that addresses the fundamental bargaining-power imbalance between publishers and digital platforms and ensures that Google, Facebook and other digital platforms must remunerate publishers for use of their content.

Accordingly, Broadsheet Media welcomes the release of the draft News Media and Digital Platform Bargaining Code.

We believe the draft code, if implemented, should assist to ensure a strong and independent media industry in Australia, including smaller, independent publishers. The code will help industry participants remain financially viable and continue to provide valuable news coverage of a broad range of matters of interest to Australian audiences.

Broadsheet Media will wish to participate in the code and be able to bargain individually or collectively with Facebook and Google for payment for content from which the platforms benefit. We also wish to ensure that the 'minimum standards' established by the code will apply to Broadsheet Media.

However, we are concerned that the code, as currently drafted, may create a significant competitive imbalance between eligible and ineligible publishers around their 'covered content'. In its current form, we view it as an existential threat to our business and other independent, Australian-owned publishers.

We have identified three areas of concern in the draft code, which we wish to highlight for consideration:

1. The definition of 'core news content' is not sufficiently broad and may exclude publishers of news content that is of legitimate public interest and significance to Australians;
2. The definition of 'core news' is ambiguous and its intent is not sufficiently clear;
3. The distinction between 'core news content' and 'covered news content' will create an unfair competitive environment between eligible and ineligible news businesses, who publish similar 'covered content' and compete for similar audiences.

Broadsheet Media believes that it should be eligible to participate in the code but based on the draft definitions of 'core' and 'covered' news, it is not sufficiently clear whether we would qualify for participation.

Our great and significant fear is that if Broadsheet, and similarly focused publishers, are not eligible, we will face unfair competition from large, horizontally integrated media businesses with access to increased resources on the back of new revenues, calculated based on the same type of 'covered news' that we publish. Yet that same revenue stream would be unavailable to us.

1. The definition of 'core news' must be sufficiently broad.

The definition of 'core news' is a central element of determining eligibility to participate in the code.

It is critical that the definition of 'core news' is sufficiently broad to capture all content produced by a journalist that reports, comments or investigates areas of interest, and are of public significance to Australians.

A narrow interpretation of the definition of 'core news', to what some might describe as 'hard news', may disqualify publishers like Broadsheet from participating in the code, despite their ongoing commitment to actively and professionally producing high quality content of interest to millions of Australians and providing that content for free to Facebook and Google.

In Broadsheet's case, we believe reporting, investigating and commenting on Australia's broad cultural activities is important and of public significance to Australians. These are matters Australians consider to be of considerable significance to them and are important to stimulating and sustaining cultural and economic activity in our communities. It deserves and receives serious coverage by professional journalists.

Serious publishers such as Broadsheet, which risk falling outside the draft definition of 'core news', take significant financial risk to employ qualified editors and journalists in Australia. We take our role in providing high quality journalism extremely seriously.

Broadsheet, and publishers like us, are no less immune to the pressures of the bargaining imbalances with the digital platform than publishers of other forms of news specifically included under the definition of 'core news'.

Like the major Australian news organisations, publishers such as Broadsheet go to great effort and expense to produce original reporting and journalism, have it published to Google and Facebook to their commercial benefit, and receive no monetary remuneration.

If the definition of 'core news' were broadened to include all content produced by journalists relating to all areas of interest and public significance to Australians, this would be a meaningful step towards ensuring a diverse and financially sustainable media industry in Australia.

2. 'Core news', as currently defined, is too ambiguous.

The current draft code is not sufficiently clear on what 'core news' is intended to capture. The Australian Media and Communications Authority (AMCA) will independently assess publisher's registrations, so it is critical that the intended interpretation is clear.

Currently, 'core news' is defined in the Explanatory Materials as content produced by a journalist that records, investigates or explains:

- issues of public significance to Australians;

- issues relevant to engaging Australians in public debate and in informing democratic decision making; or
- content which relates to community and local events.

The Explanatory Materials further describe that 'core news' content can relate directly to matters of public policy and government decision making at any level of government (including state and local government), and other matters of public importance, such as activities of private sector entities. Political, court and crime reporting are provided as a limited set of examples of content intended to meet the test. No further examples of content that would meet the test are specified.

Our view is that Broadsheet Media publishes content about issues of public significance to Australians and content that relates to community and local events. We presume the intention of the draft is to capture the content published by Broadsheet, but it is not clear.

We request that content produced by a journalist that reports, investigates and comments on the broad cultural activities within Australia is clearly recognised as covering issues of public significance and as content which relates to 'community and local events'.

The code should include all publishers who report, investigate and comment on all matters of interest and public significance to Australians via a broad and unambiguous definition of core news.

3. Legitimate, professional publishers excluded by the code will face unsustainable commercial competition from those who are eligible to participate.

It is critical that we avoid the unintended consequence of having niche and independent publishers unfairly positioned as a result of this well-intended code. Broadsheet Media is acutely aware of this potential outcome. We see it as an existential threat to our business and of other independent, Australian-owned publishers.

Businesses registered to participate in the code will be remunerated for both 'core news content' and 'covered news content'. The latter is defined in the Explanatory Material and described as 'any other content that is created by a journalist which is relevant to recording, investigating or explaining issues of interest to Australians'. The given examples include sport and entertainment news.

Independent publishers, including Broadsheet Media, directly compete for audience and advertising revenue from established, well resourced, horizontally integrated publishers, which operate titles and verticals covering both 'core news' as well as the content captured by 'covered news'.

Independent publishers, such as Broadsheet Media, identify a market opportunity and are prepared to compete for audiences and advertising revenue with their skills and ideas alone. It is a great source of pride that we have built a successful business, over 10 years, with entrepreneurial spirit, in Australia, competing with large, entrenched and well-capitalised media organisations.

However, we are concerned that a consequence of the currently drafted code would be that independent publishers that do not cover 'hard news' will be excluded from participating in the code. As a result, they would be at a considerable disadvantage when competing with large and diversified media organisations receiving revenue from the digital platforms for the same type of 'covered content'.

For example, Broadsheet Media directly competes for both audience and advertising revenue with Nine, News Corp and The Guardian's culture and lifestyle titles and sections. Like those publishers, we cover Australian culture with integrity and seriousness. We do this at great expense and effort, employing numerous qualified journalists.

However, those organisations will qualify for participation in the code on the basis of their 'core news' coverage and will receive compensation for their culture and lifestyle content. Their ability to compete with Broadsheet will be unfairly enhanced by the additional compensation received.

The result would be a media industry with an uneven playing field and one that discourages new entrants and makes it much harder for existing participants to compete.

It is essential for the ongoing sustainability of Australia's media ecosystem that small, independent and niche publishers are not put at such a disadvantage.

About Broadsheet Media

Broadsheet Media is an independent, privately owned media business, founded 10 years ago by Nick Shelton, the publisher and a director of the business.

Broadsheet Media publishes news content about culture and lifestyle online and in print in Sydney, Melbourne, Brisbane, Adelaide and Perth. The business employs 43 people, including 17 editors and sub-editors. In addition, it engages approximately 150 freelance writers and photographers across Australia on a consistent basis. Broadsheet adheres to appropriate professional standards.

Broadsheet has substantial Unique Monthly Audience of nearly 2 million people. We have steadily built this audience across Australia via high quality content and respect for our brand.

Broadsheet Media's business is driven by advertising sales and the content is provided to its audience without cost to them. We do not sell subscriptions, digital or otherwise. Annual revenue is materially above the minimum specified in the Explanatory Material.

Broadsheet Media is widely recognised as a leading Australian publisher and has received numerous industry awards for its content, brand, and its work with clients. Nick Shelton, Broadsheet Media's founder and publisher, was recognised as Australian Publishing Executive of the Year in 2017.

Broadsheet covers culture within Australian cities, with specific focus on food, art, design, fashion, entertainment and travel.

Additionally, we publish a section called City File, which includes hard news as it relates to the cultural life of a city. It includes coverage of government policies, legislation and newsworthy activities that impact life in the city.

Broadsheet believes that culturally rich and diverse cities are integral to this country. Australia's culture is one of its greatest assets, both to its citizens and to its visitors – not to mention those to whom we export it. It deserves the serious coverage we provide.

Broadsheet is a champion of small business, who are critical to Australia's economy. Our cultural industries consist of thousands of small businesses and operators who employ large numbers of workers and are contributing in their way to a vibrant way of life we all enjoy in Australia.

We take our roles and our journalistic rigour very seriously. Our editorial director carries two master's degrees from the Columbia School of Journalism. Other editors graduated with distinction from local journalism programs at UTS, UNSW, RMIT, UniMelb and UniSA.

Broadsheet goes to great lengths to ensure all our content is originally reported, fact checked and subedited. We publish hundreds of original articles each month and commission thousands of original photographs each year. Broadsheet creates high quality content that enriches the lives of Australians.

Broadsheet is entirely independent and receives no advertorial revenue from the businesses it covers. Our revenue is derived from a wide range of advertisers, including multinational companies, Australian businesses and cultural institutions, negotiated through media agencies in direct competition with other publishers.

Broadsheet Media and Digital Platforms

Broadsheet content appears daily on Facebook and Google (including within Google News), who define news on their platforms broadly to include local news and entertainment, as well as the national, international and business news provided by the large news businesses.

Broadsheet receives no remuneration or compensation for the material that appears on the platforms.

The digital platforms are an unavoidable trading partner for publishers such as Broadsheet. We must publish to the digital platforms as they have become the gatekeepers to Australian audiences.

They have built those audiences on the content provided to them for free by publishers of all types and sizes, including Broadsheet.

Using that audience, and the data extracted from them, the platforms then take 70 cents of every dollar spent advertising online in Australia. Broadsheet then competes for its share of the remaining 30 cents with every other publisher in the country.

This fundamental mismatch in power enjoyed by the digital platforms applies to Broadsheet Media as it similarly does to the major Australian publishers.

Independent publishers covering areas of interest to Australians, outside of 'hard news' are no less disadvantaged than any other Australian publisher.

Conclusion

Broadsheet Media welcomes the intention to establish a mandatory code of conduct between news media businesses and digital platforms.

However, there is considerable concern that ineligible publishers will face unfair, and unsustainable, competition from the large, well-resourced businesses that do qualify.

It is essential that that 'core news' is broadly and clearly defined to include all content produced by a journalist that reports, comments or investigates broad areas of interest to Australians.

A broad definition will ensure a strong and diverse media landscape and, critically, that smaller, entrepreneurial publishers are not disadvantaged when competing with horizontally integrated publishers.

Broadsheet looks forward to the introduction of this important mandatory code of conduct, which will go a long way to rebalancing bargaining power between publishers and digital platforms and underpinning a vibrant media to the benefit of all Australians.