



28 August 2020

Australian Competition & Consumer Commission
Email: bargainingcode@acc.gov.au

Dear ACCC,

RE: News Media Bargaining Code

CHOICE thanks the ACCC for the opportunity to comment on the Exposure Draft of the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 (the Bill) which enables the News Media Bargaining Code (the Code).

CHOICE understands the primary purpose of the Code is to increase and support the production of original, independent news. CHOICE strongly supports this policy goal, noting that supporting original news production requires some direct support of news media businesses.

Consistent with this approach, there should be some measures within the code that support the production of high quality independent news, agnostic to the type of business that produces it, as well as measures that specifically address the important role of news media businesses.

CHOICE supports the minimum standards and wants to see access expanded to a wider group of organisations creating independent news

The minimum standards contained in Division 4 are well defined and should not be amended. Advance notice of major algorithmic changes, advance notice of changes to the display of news content and advertising, clear contact points within digital platforms, the

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recognition of original news, and, the ability to better moderate user comments are all important protections that will greatly assist small publishers like ours. We ask that the ACCC continue to stand strong against pressure from Google and other digital platforms seeking to lower these standards. These are reasonable requirements to place on large digital platforms and of great benefit to publishers.

Currently, the Bill requires the same application and assessment process by the ACMA for publishers to access revenue negotiations and the minimum standards. Given the Code's objective to support news creation, it is important that the minimum standards apply to all organisations that have a significant contribution to the production of high quality, independent news. To do otherwise would give particular types of news-producing businesses a competitive advantage over other types of businesses and organisations. That would be likely to create barriers to entry and stifle innovation in news production in Australia over time.

It is also important to note that some news businesses are involved in other commercial activities that place them in competition with non-news businesses - e.g. partnerships with financial comparison businesses or real estate listings. Giving news businesses exclusive access to advance notice of algorithm changes would give them an unfair competitive advantage in those other markets in which they operate.

The draft code already contemplates that some businesses (and potentially news sources) whose predominant purpose is not just the production of news - namely the ABC & SBS - should benefit from the minimum standards. The ACCC should expand this category to support news creation from a range of organisations.

Given the strong benefits of the minimum standards, we ask the ACCC to consider different criteria and a separate "light touch" registration process for organisations that are genuinely involved in the production of news content but only wish to gain the benefits of the minimum standards. This would benefit small publishers, new publishers and those publishers excluded from revenue negotiations (ABC, SBS).

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Appropriate criteria would be that an organisation looking to access the minimum standards:

- Produces core news content as a significant component of their operations (a lower threshold than producing predominantly core news content).
- Meets the Australian audience test in 52J
- Is subject to editorial standards and editorial independence in relation to news content
- Is not required to satisfy any threshold in relation to annual revenue.

The registration process should allow a publisher to self-assess for the tests outlined in 52(1). It should also remove the requirement to meet the revenue test (52G) to allow new entrants and organisations with not-for-profit or small community-run business models to easily access the minimum standards. We note that this could be particularly important in many regional communities, where newer, smaller scale models of news production are already springing up following the closure of newspapers by major news organisations

Allowing greater access to the minimum standards should provide a significant competition benefit. The draft Bill requires that businesses demonstrate minimum \$150,000 a year in revenue, effectively only allowing access to Code benefits for organisations in operation for at least one financial year. New entrants to the news market should not be locked out of access to algorithmic changes, comment moderation tools or the recognition of original news.

Recommendation: Allow publishers only seeking access to the benefits of the minimum standards to meet different criteria and undertake a light touch registration process with the ACMA, involving

- a lower content test and no revenue test.
- publisher self-assessment for the registration process.

Code content should be broader than work created by journalists

The Exposure Draft Bill defines core news content as work that is “created by a journalist” and also covers issues of public significance or important to the community. Requiring that content must be created by a journalist is overly restrictive. The Code should also capture

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instances where experts in a field write news content and are subject to editorial standards, even when that expert is not a journalist.

At CHOICE, examples of such content include our public interest investigations into product safety. They can be written by our testing experts - the people who have physically tested the products and can speak to overall quality failures and the bigger picture issues for readers. This work is subject to CHOICE's editorial standards and presents similarly to news content written by journalists on other sites. As an example, see this article on testing failure rates on baby products in the CHOICE labs written as a news piece by CHOICE tester Rebecca Ciaramidaro. Rebecca has a science degree and over a decade of experience as a product tester and content creator at CHOICE. Similar investigations work is written by CHOICE experts with degrees in engineering, science, technology and deep experience with technical matters that inform these investigations.

Failure to make this amendment would lead to perverse situations where a secondary website covering a CHOICE issue would be captured by the code but not the original content. For example, this reporting from the SMH would be captured but not the source article on product safety failures.

Recommendations:

- Remove the requirement that core news content is “created by a journalist”. This section of the definition could be removed entirely or replaced with “created by a news media professional or expert adhering to editorial standards.”
- Similar amendments should be made to the definition of covered news content.

Definition of news source

The definition of “news source” says that a website can be considered a news source.

At CHOICE, our website meets a number of needs for Australians linking to our not-for-profit mission. As well as unique investigative journalism, our website has behind-the-paywall product reviews, advocacy information and guides to consumer problems. Only the news and investigative content would rightly be considered news under the code. However, given

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the breadth of activities presented on choice.com.au it is unlikely this website itself could be considered to predominantly be a news source.

To properly ensure that CHOICE investigations are captured, we'd like to see the definition of "news source" amended so that it specifies that "a website or section of a website" can be considered a news source. For example, we'd consider this section of the CHOICE website devoted to news and investigations to be appropriate for inclusion. As an alternative, this matter could be addressed by adding clarity to the content test (s52H).

Recommendation: Amend the definition of "news source" to include "a website or section of a website"

For further information, please contact CHOICE on eturner@choice.com.au

Yours sincerely,

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