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ACCC DRAFT NEWS MEDIA BARGAINING CODE

AUGUST 2020

1 Introduction

We commend the ACCC on its continued commitment to redressing the massive imbalance in bargaining power between digital platforms and Australian media companies, and the resulting deleterious consequences for Australian journalism, rightly recognised by the ACCC as a public good. The recent misinformation campaign by Google, prosecuted globally, just reinforces the importance of this code, and the commitment of the ACCC and the government to make it work.

We support the overall approach and settings of the draft Code. Overall, it has addressed the issues raised by us and our members in responses to the Concepts Paper.

Our comments are about some of the details, rather than fundamental aspects of the Code.

2 Bargaining news business corporation

We understand that the intention is that a registered news business may appoint an entity other than a registered news business to bargain for it. This is not clearly provided for in the draft legislation, which appears to require that the bargaining entity itself be a registered news business. The intention to enable collective bargaining would be better realised if registered news businesses had broader options for representation.

3 Non-discrimination requirements

The anti-discrimination provisions need to be cast more widely, to capture activities affecting the markets related to a news business, as well as the news business itself. The platforms are themselves significant players in those markets, such as ad serving.

The requirements also need to apply to all content created by news businesses, not just news content as defined by the draft legislation.

4 Content test

The proposed approach for the content test – that a news source creates and publishes content that is ‘predominantly’ news content – may exclude news sources that we understand the ACCC intends to include. It may exclude a news source that delivers significant core news content (as defined) merely because it also delivers other content. A news source that delivered the same content, but not together with other content, would meet the test, which seems contrary to the intended outcomes of the draft legislation.

The requirement that ‘core news content’ and ‘covered news content’ is ‘created by a journalist’ may result in those definitions being applied more narrowly than intended. We understand the intention is to cover content on designated topics (e.g. issues of public significance for Australians) that is created in accordance with professional journalistic standards.

5 Timeframe for information request

The draft Code requires platforms to comply with information requests from a bargaining news business corporation, but does not require this to be done in a given timeframe. Platforms must be required to respond to an information request within a set timeframe in order for the process set out in the Code to operate as intended.

6 Trade secret exemption

Contrary to misinformation spread by Google, news businesses are not seeking disclosure of Google's algorithm, and, to the contrary, believe that that would not be in the public interest.

They are, however, rightly concerned that platforms will hide behind the trade secrets exemption. Platforms should be required to provide relevant information, other than their algorithms, subject to strict confidentiality undertakings from the bargaining news business corporation. There may also need to be a process that enables review of the veracity of a platform's claim that information is a trade secret, for example by the ACCC.