



August 28, 2020

Submission to the ACCC News Media Bargaining Code

Context

Regional media in Australia is facing some of its most difficult times ever. For many years, publications in rural and regional areas have operated on thin margins, with the advertising-based revenue model being eroded by digital platforms.

Indeed this was the key finding of the Australian Competition and Consumer Commission's *Digital Platforms Inquiry* last year.

As such, I welcome both the intent and the design of the Mandatory Code of Conduct (the Code) developed by the ACCC. Requiring digital platforms to reach negotiated agreements to pay for news is a sensible reform to adapt the news media industry to the 21st century.

However, through the consultation process on the ACCC's concept paper, a number of submissions raised concerns that the final framework adopted by the Government must reflect the fundamentally different circumstances that small, regional publications face compared to large, national media companies.

Concerns with the draft Code

I remain concerned that the Code pays insufficient attention to the diversity of media outlets in Australia, and risks unintended negative impacts on small and regional media publications. Indeed, neither the draft legislation nor the explanatory memorandum specifically mentions small and regional publishers.

Yet there are a number of conceivable scenarios in which the Code could inadvertently harm regional media outlets.

The draft framework places obligations on news businesses to establish dedicated points of contact with digital platforms, engage in negotiations and perhaps arbitration. This process itself involves an impost on small businesses – even when they negotiate as a bloc – to reach agreements with some of the world's largest companies.

Large digital platforms may opt to only enter agreements with large news companies, and algorithmically disadvantage smaller and regional media by lowering their content in search results.

Whilst this discrimination is explicitly banned in the Code, this may be difficult to enforce in practice. It is plausible to imagine scenarios in which such discrimination would be difficult



to prove, and would only be determined well after it has occurred. This risks creating a two-tier media system in which content from smaller publications is disadvantaged and the statutory protections are insufficient.

Recommendations

The 12-month review of the Code should be built into the legislation and it should specifically review the impacts of the Code on small and regional publishers. A general review that fails to separate the distinct experiences of national versus regional media will be insufficient.

Moreover, that review should be sufficiently resourced to provide support to regional media companies to assess those impacts. It is not enough for the ACCC to invite submissions and expect small regional companies to have the resources to assess, identify and communicate the impact of a complex regulatory system, much less propose specific legislative changes.

Conclusion

I commend the ACCC on an ambitious and important reform, and I ask that the new framework explicitly be implemented with concern for regional and small media businesses.