

ACCC BARGAINING CODE SUBMISSION

Private Media, June 5, 2020

The survival of independent Australian-owned news journalism is at stake:

The federal government's decision to establish a Bargaining Code mandating digital platforms to distribute funding to news publishers is likely to seriously impact on Australian democracy and potentially determine the fate of independent news publishing.

If the effect of this code were to transfer significant financial support from two giant US technology companies to three large Australian/US media companies, without sustaining smaller independent Australian-owned public interest journalism, it will inflict substantial collateral damage on our society. It will reduce competition, starve regional and specialist audiences of original civic journalism, and increase the already-high concentration of ownership of Australia's news ecosystem.

Diverse ownership of news publishing is crucial to democracy. It gives hundreds of regions and communities access to local journalism, provides diversity of ownership of news coverage and views in the cities, provides competition for other businesses that wish to advertise and competition for the employment of media workers such as journalists, and means that the country's journalism isn't left almost entirely in the hands of two or three multi-billion-dollar primarily entertainment companies.

In the words of the ACCC Concepts Paper, the implementation of bargaining frameworks "should not unduly advantage larger news media businesses at the expense of smaller news media businesses, including regional and local news outlets."

If benefits are conferred on the large, influential media companies as a result of the Bargaining Code, that will enable further concentration of Australian media ownership while independent outlets, locked out of additional revenue sources, continue to close. Given the already parlous state of media diversity, especially regional and local, the consequences of the decisions made in this process could adversely and permanently impact the state of Australian news journalism.

The definition of news:

In its statement mandating the creation of a code, the federal government referred to the "commercial arrangements between digital platforms and *news media businesses*" and to the monetisation of "*news content*".

But what constitutes “news”? The ACCC Concepts Paper suggests “it will likely be appropriate for the Bargaining Code to incorporate a definition of news that focuses on the *news content itself* rather than the nature of the news media business producing the content.”

And the Concepts Paper pointed to the definition of ‘public interest journalism’ used in the ACCC’s Digital Platforms Final Report:

“Journalism with the primary purpose of recording, investigating and explaining issues of public significance in order to engage citizens in public debate and inform democratic decision making at all levels of government.”

We agree this is an appropriate definition for the purposes of the code and suggest that it should be a guiding principle in its development. To define news more broadly in a way that encompasses clearly non-public interest journalism -- celebrity gossip, recipes or property porn -- or to use a facile definition of public interest journalism as “the journalism that interests the public”, implies that entertainment, voyeurism or media cross-promotion is part of the apparatus of sustaining the tenets of democracy.

In our view, news publishers should be defined as publishers who create original journalism, the vast majority (80%+) of which is “journalism with the primary purpose of recording, investigating and explaining issues of public significance in order to engage citizens in public debate and inform democratic decision making at all levels of government.”

How should the value exchange be calculated?

We concur with the ACCC chairman’s recent observation: “The digital platforms need media generally, but not any particular media company, so there is an acute bargaining imbalance in favor of the platforms. This creates a significant market failure which harms journalism and so, society.” ¹

In addressing this market failure, we do not agree with the proposition that it is a “copyright” issue or that content is “stolen” or used illegally by the platforms. As the ACCC concluded in its recent platforms review, tech companies, media organisations and consumers *all* benefit from the use of snippets -- “media businesses benefit because a snippet provides context and an indication to the user of the value of that content, increasing the likelihood of consumers clicking through”. The “stolen content” characterisation is self-interested on the part of large media companies, and unhelpful in relation to the debate over a Bargaining Code. After all, publishers are free to prevent their content appearing on Google and Facebook, yet rarely if ever do so.

Therefore, in our view, any *formula* that attempts to place a value on publishers’ content appearing on the platforms, without placing a counterbalancing value on the benefit to

publishers of that content appearing (legally) on those platforms, would be subjective, contestable and ultimately futile.

We believe, to be consistent with the core principles put forward by the ACCC in its final report, any distribution of revenue to news publishers, required by a mandatory code, should be based on its *value to support unique public interest journalism* -- not on a mathematical formula predicated on audience size or volume of clicks, which would be likely to reward a handful of large (often multinational) and profitable publishers, who benefit from economies and scale and the capacity to cross-promote content, at the expense of dozens of diversely-owned independent regional and national producers of public interest journalism, whose survival in the current news publishing environment is precarious.

We believe it should be an exchange calculus that recognises:

- That professionally-produced public interest news journalism is a pivotal plank of an effective democracy and society.
- That journalism, in the commercial sector, should be owned by as many companies and entities as possible -- that high concentration of media ownership is detrimental to a healthy democracy.
- Smaller independent regional and national news publishers, like Private Media, are devoted almost entirely to producing public interest news journalism and do not have other profitable businesses (such as free-to-air or pay television or property portals) to cross-subsidise their news journalism, and limited opportunities to cross-promote content. We rise or fall on the economics of our public interest news publishing alone.
- The journalism produced by independently owned publishers like Private Media is unique; if it disappears or shrinks, our audiences (regions, cities, and coverage of special interest subjects such as government and politics) will have no replacement.

We concur with the recent comment by Facebook's global head of news, Campbell Brown, that there is a compelling case for platforms to "work with governments to help news publishers build sustainable business models." 2

A two-tiered system will protect news diversity and independence:

We believe that to effectively reflect a code intended to *support unique public interest journalism*, the distribution of revenue to news publishers, required by a Bargaining Code, should be structured to recognise the crucial differences between the industry's dominant news publishers and smaller providers of public interest journalism. Those differences are partly driven by size, but go beyond that.

Accordingly, we suggest that there should be two tiers within the code covering publishers of news (as defined above):

Tier 1: Large news publishers with annual revenues above \$30m

Tier 2: Independent news publishers with annual revenues below \$30m

Under this approach, a weighting would be given to Tier 2 publishers, requiring a minimum allocation of funds raised from digital platforms in order to support news media. The allocation of funds would be disproportionate to the size of these operations and to their annual revenue relative to other, larger news media organisations.

The justification for this is based on the rationale for the Bargaining Code itself, which is designed to take account of the “public good” offered by news media. This weighting recognises that smaller and regional publishers are distinguished both by the nature of the product they supply and by the added difficulty in competing in an environment where digital platforms serve as news distributors and the beneficiaries of advertising revenue.

Thus, beyond the simple issue of size, we suggest other factors that would determine membership of this weighted Tier 2 group:

Public interest journalism content: a significant proportion of the content produced by the publisher, and certainly the majority of content, falls into the definition outlined above.

Originality: a significant proportion of the content produced by the publisher is original journalism created and edited professionally by staff journalists or contributing writers.

Localism: not mandatory, as some small, independent publishers producing original public interest journalism contribute at a national or state level, rather than a local level.

Independent ownership: each member company in Tier 2 to be separately and independently owned, thus contributing disproportionately to maintaining the diversity of news media ownership in Australia.

Organisational capacity: recognises that smaller organisations will vary in their ability to take advantage of opportunities to expand or otherwise improve their businesses or cross-subsidise operations through other related large-scale businesses.

Established presence: small and regional publishers must be able to demonstrate at least 12 months operation, providing they meet the other factors. This does not mean there can be no new entrants; it means they will only qualify for support under this scheme after 12 months’ operation.

Membership of external standards scheme: designed to ensure and promote quality within the sector.

Diversity of voice: recognises the importance of giving ‘voice’ to a wide range of views, analysis and news that either challenges more orthodox/mainstream reporting or services a specific audience or grouping of audiences (ie public servants as per *The Mandarin*).

These criteria would, we believe, enable a funding distribution model that is consistent with the ACCC’s core principle of supporting public interest journalism based on the news content itself, rather than the nature of the businesses producing that content. A more simplistic approach that reinforces the dominance of existing major media companies is likely to further undermine media diversity.

About Private Media:

Private Media is a “pure play” publisher of public interest journalism, across three mastheads:

Crikey: politics, media, business, current affairs. Subscriber model. Daily publication.

The Mandarin: Government news, analysis, insights. Free + subscriber. Daily publication.

Smart Company: News, analysis for small-medium business. Free content. Daily publication.

NOTES

1 <https://www.crikey.com.au/2020/04/23/frydenberg-recycles-news-corp-attacks/>

2 <https://www.nytimes.com/2020/05/10/business/media/big-tech-has-crushed-the-news-business-thats-about-to-change.html>

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