

ACCC Digital Platforms Inquiry

SUBMISSION BY



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Seven West Media: Submission to the Australian Competition and Consumer Commission's Digital Platforms Inquiry

1. Executive Summary

1.1 Seven West Media Limited (**SWM**) welcomes the opportunity to provide this submission to the Australian Competition and Consumer Commission's (**Commission**) Digital Platforms Inquiry (**Inquiry**).

1.2 The stated focus of the Commission's Inquiry is the impact of digital platforms on the state of competition in '*media and advertising services markets, in particular in relation to the supply of news and journalistic content*'. SWM agrees that news and journalistic content are important aspects of this Inquiry. There are significant implications for democracy that arise from a lack of pluralism of opinions. SWM invests heavily in news and journalism and seeks to provide accurate, high quality news services that add to the range of views available to readers and viewers.

1.3 However, SWM can only continue in this role where the entirety of its business model remains financially viable. SWM adopts a business model which enables it to develop and produce content which it offers to consumers free of charge through free to air (**FTA**) television or at a nominal fee (through newspapers and magazines) by reason of the revenues derived from offering advertising services to advertisers on its various media platforms. SWM's role as supplier of news and journalistic content to consumers is directly related to its ability to maintain viability across all of its media platforms, but this is becoming challenging. Advertising revenues are falling across all of SWM's media platforms by reason of revenues shifting from traditional media platforms to digital platforms, not only in the area of news but also in the area of entertainment.

1.4 It is SWM's submission that both Google and Facebook enjoy significant market power in the markets for search services and social media platforms respectively. Unconstrained by competitors; countervailing customer/buyer power; and regulation, Google and Facebook use their market power in their respective markets to engage in conduct which negatively impacts traditional media, and which harm consumers.

1.5 SWM raises the following key concerns and proposals to address them:

(a) (**Advertising**) Digital media platforms purport to deliver more targeted advertising opportunities to relevant audiences thereby leading to less wastage. However, Google and Facebook do not use the same metrics as traditional media and are not subjected independent auditing. Seven is concerned these platforms may overstate their reach and effectiveness to increase their attractiveness to advertisers. Seven submits that the claims of these platforms must be subject to third party verification and an ACCC (or Government) endorsed metric so that advertisers can ask for reliable and relevantly comparable consumer reach information;

(b) (**Content**) Neither Google nor Facebook are content developers. The content that attracts users to those platforms is not provided by either Google or Facebook. It is content provided by users or by professional content businesses. Given the two-sided nature of the market, digital search engines and social media platforms can attract users of search, news and entertainment services in connection with content that they neither fund nor acquire at a commercial value from content providers. They 'monetise' that 'free' content through advertising revenues accruing

to them. There is no reason why digital platforms, whether general search engines or social media platforms, should be using traditional media content without payment. But because of the size and market dominance of these digital platforms, content owners have been powerless to require fair remuneration. Unless some mechanism is introduced to address this issue, then the distortionary effect in content markets will continue with consequences which include undermining the ability to continue to invest in content development. SWM submits that a collective licensing arrangement should be considered in respect of third party content supplied through digital platforms;

- (c) **(Asymmetric regulation)** SWM's media platforms (in particular free-to-air television) are subject to extensive regulatory obligations and safeguards as part of a social contract that has ensured a safe viewing environment for families (and for advertisers), accurately informed citizens and a thriving local production sector. By contrast, digital platform providers are not subjected to any such regulations and costs. Yet they monetise content developed by content providers that are subject to the regulations. This means that traditional media providers compete with digital platforms for advertising, but at a cost disadvantage because of the social obligations imposed on them. SWM submits that it may be appropriate to develop and impose a CSO levy on these platforms to recognise the cost that traditional media is bearing. There is also a need to reconsider advertising regulations that apply solely to traditional media, which can no longer be justified in the current market;
- (d) **(Unavoidable trading partners)** There is a complex relationship between traditional media and digital platforms. On the one hand, there is competitive tension concerning the competition for advertising dollars. However, digital platforms are also a significant service provider to traditional media and in many cases have become an unavoidable trading partner because they serve as an important source of traffic for content providers. SWM is concerned that given the market power of Facebook and Google, they have the ability and incentive to engage with customers on a 'take it or leave it' basis; they may refuse to negotiate terms and may unilaterally impose changes to their service, their policies and their terms which have significant ramifications for the businesses that use these platforms.
- (e) **(Data)** Google and Facebook offer 'free' services and content, including access to news and information created by others. However, the 'price' that consumers pay is their data. The data Google and Facebook have amassed provides substantial barriers to entry, reinforces the dominance of Google and Facebook in their respective markets and increasingly enables Google and Facebook to extend their dominance into new areas. Following the Cambridge Analytica scandal and in light of the sheer scale and nature of the data held by these two businesses it is clear that regulators need to do more to investigate and shine a light on the behaviour of these two companies in data collection, and to consider whether the existing regulatory regime is sufficient to protect the interests of users, to maintain competition in associated markets and to constrain undue influence and power being exerted over businesses and government.
- (f) **(Systematic acquisition of start-ups)** Further consideration must be given to how to evaluate a series of acquisitions of start-up disrupters by

firms with existing market power. SWM welcomes the comments made by the ACCC Chairman in this regard in late 2016¹

2. **About Seven West Media**

2.1 Seven West Media is one of Australia's leading integrated media companies, with a portfolio of world class television, publishing and digital properties.

2.2 The Seven Network is Australia's most-watched television network, with five broadcast channels (7, 7TWO, 7Mate, 7flix and racing.com) in Sydney, Melbourne, Brisbane, Adelaide, Perth and regional Queensland. It is home to many of Australia's most popular programs including My Kitchen Rules, House Rules, Home and Away, Better Homes and Gardens and Sunrise, along with key sporting events including the AFL, the Olympic and Commonwealth Games. Regional affiliates broadcast Seven content across New South Wales, Victoria, Western Australia, the Northern Territory and Tasmania

2.3 Our TV production business, Seven Studios, is one of the country's largest producers of Australian content, and one of the only significant producers of Australian content that is Australian owned. Seven commissions, creates and produces around 700 hours of programming a year.

2.4 Seven News is the highest rating TV news service in Australia. Each week Seven News creates and broadcast over 120 hours of news and current affairs programming across five capital city markets as well as seven local areas in regional Queensland. Along with flagship programs, Sunrise, Weekend Sunrise and Sunday Night and Today Tonight (Adelaide and Perth), this programming included national bulletins, capital city bulletins in Sydney, Melbourne, Brisbane, Adelaide, and Perth and regional bulletins in Cairns, Townsville, Mackay, Wide Bay, Toowoomba, the Sunshine Coast, Rockhampton and the Gold Coast,.

2.5 The West Australian and The Sunday Times are the number one news brands in WA.

2.6 Pacific Magazines is Australia's best performing magazine publisher and home to three of the top six highest reaching magazines in the country - Better Homes and Gardens, New Idea and that's life!.

2.7 Seven West Media has a strong online presence for each of its television, newspaper and magazine brands, as well as stand alone digital properties such as Perthnow.com.au, thegame.com.au and beautycrew.com.au. Seven recently ended its joint venture with Yahoo!7 after 11 years to pursue its own digital strategy, including the launch of online streaming platform 7Plus.

3. **Scope of the Digital Platforms Inquiry**

3.1 The terms of reference of the Inquiry direct the Commission to inquire into "*the impact of digital search engines, social media platforms and other digital content aggregation platforms on **the state of competition in media and advertising services markets**, in particular, in relation to the supply of news and journalistic content, and the implications of this for media content creators, advertisers and consumers.*"

¹ <http://www.afr.com/technology/accc-chair-rod-sims-eyes-potential-regulatory-reform-to-police-startup-buyouts-20161027-gsc6k4#ixzz5DBZVY3Hs>

- 3.2 SWM notes two key aspects arising from the terms of reference.
- 3.3 First, three specific products are called out for examination:
- (a) digital search engines;
 - (b) social media platforms; and
 - (c) other digital content aggregation platforms.
- 3.4 SWM agrees that it is these three specific products that, should be the principal platforms relevant to this Inquiry. It is also important to focus on these three products when examining the issues identified in section 3 of the Commission's Issues Paper, particularly in defining the markets in which they operate and the consequent examination of whether any players in those markets have market power.
- 3.5 Secondly, the Inquiry, whilst specifically identifying news and journalistic content² for attention, is not confined to this content type. As explained below, news and journalistic content are an important aspect of this Inquiry, but digital search engines and other platforms also have significant impacts on content more generally, particularly local content production, and on the operating model of FTA television, and the discoverability of digital content and digital media businesses.
- 3.6 In SWM's submission, it is not a question of where the line is drawn between "news and journalistic content and other media content", but the impact that the products identified in paragraph 3.3, and the conduct of suppliers of those products are having on the supply of traditional media.
- 3.7 In calling out all forms of content, SWM is not seeking to understate the importance of the issues relating to news and journalistic content. There are significant implications for democracy that arise from a lack of pluralism of opinions and a small number of players having control over the prominence and availability of news content. It is not merely the fact of only one or two gatekeepers to news and journalistic content that is an issue but also the way in which the content targeting practised by Google and Facebook operates, which can mean that users are exposed to self-reinforcing views, and that more extremist views are encouraged (in preference to accuracy and impartiality) because they are more likely to generate a reaction. SWM values accurate and unbiased news and journalism. SWM invests heavily in news and journalism and seeks to add to the range of views available to readers and viewers. SWM can only continue in this role where the entirety of its business model remains financially viable.
- 3.8 As well as impacting news and journalism, digital platforms impact other aspects of media businesses that monetise content - that is, their impacts are not confined to news and journalistic content. To examine only their impacts on news and journalistic content would be to examine only a part of the wider picture and as such, would fail to properly understand the scope of the effect of the market power used by the digital platforms across the Australian media landscape.
- 3.9 The impact on the whole business model is particularly relevant in the case of FTA television because the operating model of FTA television is not solely determined by reference to commercial considerations, but also by regulatory and social contract obligations (including for example, obligations to develop Australian content;

² As it is suggested it will on page 7 of the Commission's Issues Paper.

classification time zones and restrictions on advertising including gambling, alcohol and other products and content unsuitable for children; obligations to provide captioning services).

- 3.10 The challenges arising from digital search engines and other platforms affect the ability of FTA television operators to meet their social contract, particularly given the complete absence of any comparable requirements being applied to digital platforms. SWM encourages the Commission to pay close attention to these issues. They are discussed further in section 12 below and also in section 4 of the Free TV submission to this Inquiry.:
- 3.11 In chapter 2³ of the Issues Paper, the Commission identifies as one potential area for concern, "the impact of the reduction in media companies' advertising revenue on the creation of news and journalistic content in Australia". However, the reduction in advertising revenue affects all aspects of content production. Further, FTA broadcasters cannot continue to produce important news and current affairs, which provides an important counterbalance to the "click-bait" and "fake news" of digital platforms, unless our entire business is financially viable. It is therefore important that the implications for other forms of content are also considered. If this does not happen, there is a risk that recommendations that do not take into account all aspects of the impact of digital platforms will not be effective and/or create other undesirable and unintended consequences (whether social or market failure consequences or perhaps both).
- 3.12 SWM agrees with the comments on p.9 of the Issues Paper about the beneficial social externalities of news and journalistic content. There are, in SWM's view, also beneficial social externalities arising from the following obligations imposed on FTA television that cannot be fully monetised by media companies, including:
- (a) Australian content obligations - Commercial FTA broadcasters currently spend approximately \$1.5 billion on Australian content each year. This in turn fosters and develops Australian talent in the area of screen production as noted at section 4.2 of the Free TV submission page;
 - (b) FTA broadcasters provide a safe environment for families to consume content, including classification time zones; restrictions on advertising of adult products, including alcohol; gambling and films/computer games unsuitable for children;
 - (c) FTA broadcasters comply with regulatory obligations to ensure that news reporting is fair, impartial and accurate;
 - (d) FTA broadcasters comply with regulatory obligations to ensure that content classified higher than MA15+ is not broadcast on FTA television;
 - (e) FTA broadcasters comply with requirements to disclose commercial obligations and to ensure that commentary is distinguishable from the reporting of factual information; and
 - (f) Complaints handling mechanisms are in place where viewer concerns must be addressed and responded to and can be investigated by ACMA.

³ At page 8.

3.13 Whilst upholding the social contract obligations arising from legislation and applicable codes of conduct, FTA broadcasters provide 19.9 million Australians with free access to sports and entertainment that delivers enormous cultural dividends which cannot be fully monetised. This again supports a broader focus by the Commission on content and media operating models, rather than a focus solely on news and journalistic content.

4. **Identification of the relevant markets**

4.1 There are a range of markets that are relevant to the issues raised by this Inquiry. In SWM's submission, a key competition issue in this Inquiry is the ability and incentive of dominant providers in one market to leverage their market power in that market into other markets to the detriment of competition in those other markets. In this submission, we therefore identify first the markets in which the market power concern arises and then identify the markets affected. It is less important to delineate the precise boundaries of the markets affected if competition concerns would arise regardless of where precisely those boundaries are drawn.

4.2 It is helpful first to consider the markets in which the three specific products identified in paragraph 3.3 are provided. It is these markets that are the source of the market power which is then leveraged into other related markets.

Markets which are the source of market power

4.3 In SWM's submission, the markets which are the source of market power of concern to the Inquiry are:

- (a) the market for general digital search services;
- (b) the market for digital social media services; and
- (c) markets for digital content aggregation services.

4.4 It is the first two of these markets in which significant market power concerns exist. It is SWM's submission that Google has substantial market power in the market for general digital search services and Facebook has substantial market power in the market for digital social media services. While the concerns outlined in this submission are most acute in connection with the first two markets, it will be important to guard against similar market failures in the content aggregation market in the future.

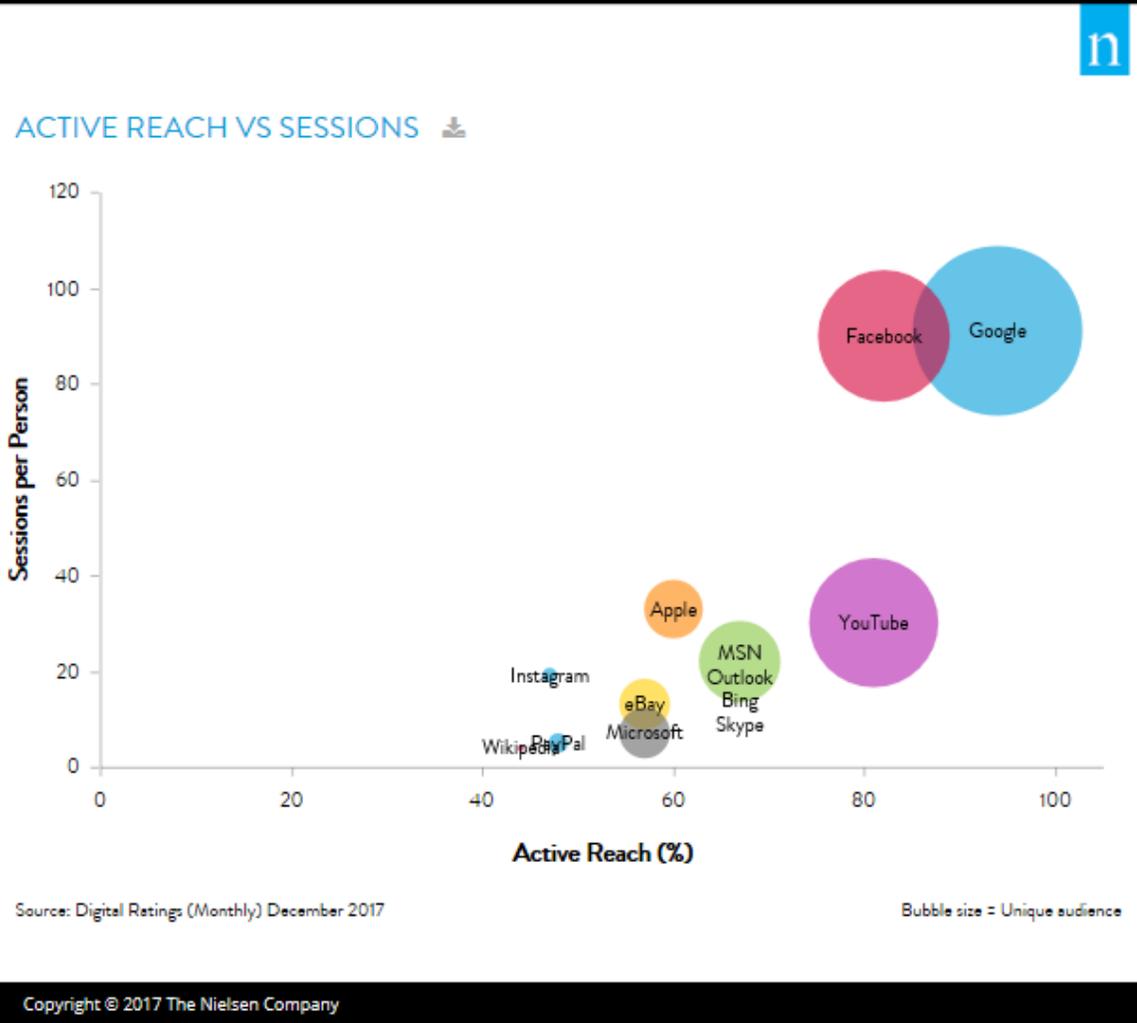
4.5 SWM notes that YouTube, owned by Google's parent company Alphabet Inc, is a platform which offers services that can be positioned as both a social media service as well as a content aggregator and appears increasingly to fall within the market for digital content aggregation. YouTube's conduct in these markets gives rise to many of the same concerns raised in this submission concerning Facebook and Google. As a subsidiary of Google and benefiting from the same network effects and data, YouTube should be considered to have market power to the same extent in the market for content aggregation services.

4.6 Set out in sections 9 and 10 below is the detailed reasoning which supports SWM's contention that each of Google and Facebook have substantial market power in the search services and social networking markets respectively.

4.7 It is useful, in terms of graphical depiction to have regard to Figures 1 and 2 below sourced from The Nielsen Company which includes data on active reach, sessions per

person and hours of use of the top 10 digital platforms in Australia for December 2017. These figures demonstrate clearly the strength of position held by each of Google; Facebook and YouTube in terms of consumer usage.

Figure 1: Active reach vs sessions graphical depiction⁴



⁴ http://digitalmeasurement.nielsen.com/digitalmedialandscape/surfing_report.html

Figure 2: Surfing Report - Total Audience (top 10 brands and their engagement)⁵

Rank	Brands	UA (000)	Page Views (000)	Active Reach (%)	Sessions per Person	Time per Person (hh:mm:ss)
	Total Audience	20,164	24,987,647	100%	221	70:00:24
1	Google	18,918	4,683,512	94%	91	08:40:14
2	Facebook	16,590	1,878,155	82%	90	15:02:26
3	YouTube	16,427	476,937	81%	30	06:42:03
4	MSN/Outlook/Bing/Skype	13,485	559,529	67%	22	02:03:10
5	Apple	12,071	18,565	60%	33	01:41:45
6	eBay	11,581	583,657	57%	13	01:15:53
7	Microsoft	11,577	165,786	57%	7	00:49:23
8	PayPal	9,672	131,443	48%	5	00:08:13
9	Instagram	9,379	45,072	47%	19	01:37:31
10	Wikipedia	8,863	88,292	44%	4	00:10:54

As of February 2016, Digital Ratings (Monthly) includes cross-device audiences and is the data of record.

Source: Digital Ratings (Monthly)

Markets into which leveraging occurs

- 4.8 In the context of the Inquiry, of utmost concern is the impact that the market power in these markets has:
- (a) on the relevant advertising services markets; and
 - (b) the flow on implications to other markets for the supply of content to consumers including news and entertainment,
- 4.9 Advertising markets have traditionally been considered as platform specific markets, but competition authorities are increasingly recognising the convergence between platforms in the supply of these services.
- 4.10 It is not necessary for the consideration of the leveraging issues that a determination be made on whether these markets are platform specific or not. This is because it is not necessary for relevant competition concerns to arise for Google and Facebook to have market power in the affected markets. Indeed it will often be the case that they

⁵ http://digitalmeasurement.nielsen.com/digitalmedialandscape/surfing_report.html. UA (000): UA stands for Unique Audience (with the data given in the thousands), which is the total number of unique people (de-duplicated) that visited a site at least once during the specified time period. This metric has been hybridised using tagged census data to capture access from locations outside home and work. When website and mobile content is tagged the UA includes access from mobile and tablet. (This does not include tablet applications). Page Views (000): Page Views is the total number of times a web page is requested by a user and fully downloaded. Active Reach (%): Percentage of all active people aged 2+ that visited the site, used the application or watched the video stream. Sessions per Person: Total number of times Unique Browsers return to a site, having left for 30 minutes. Site based sessions is a lead metric that can be used for any time period. Time per Person (hh:mm:ss): The average time spent on a site per user.

do not initially have market power in the affected market and it is that position that is sought to be addressed through the leveraging.

- 4.11 Whether or not the advertising services are regarded as being in one multi-platform market or in separate platform specific markets, the trend for online platforms to take advertising away from traditional forms of media is clear.⁶ It is the implications of that for content production and the social contract that underpins FTA television broadcast licences that should be the focus of this Inquiry.

5. The market for internet search functions

- 5.1 Much detailed work has been done and published by the European Commission (EC) in connection with Google and the market for internet search functions in its infringement decision, *Case AT.39740 Google Search (Shopping) dated 26 July 2017 (EC Google Decision)*. In that decision, the EC found that provision of general search services constitutes a distinct product market.

- 5.2 As the EC found, even though users do not pay a monetary consideration for the use of general search services, they contribute to the monetisation of the service by providing data with each query. The data which users agree to allow a general search engine to store and re-use is of value to the provider of the general search service as it is used to improve the relevance of the search service and target advertising. In addition, given the two-sided nature of the market, allowing users to search for free increases the number of users and hence makes the platform more attractive to advertisers who do pay for use of the platform.

- 5.3 In coming to its conclusions, the EC considered demand and supply side substitutability; took into account market share of Google and therefore the ability of competitors to act as a competitive constraint on Google; the existence of barriers to entry and expansion, as well as network effects.

- 5.4 The EC specifically rejected the view that content sites, specialised search services and social networks were in the same market as general search services of the type offered by Google. Specifically, the EC found that:

- (a) content sites and general search sites had limited substitutability from a functional perspective because search sites are intended to direct traffic to other sites, whereas content sites (even those with sophisticated search functionality) only provide access to their own site or content from those with whom they have some affiliation;
- (b) specialised or vertical search services are not in the same market⁷ because:
 - (i) they do not aim to provide all possible relevant results for queries; instead, they focus on providing specific information or purchasing options in their respective fields of specialisation. The same search terms in a general Google search will yield quite different results from those in a specialised search such as Google Shopping. For example, a search for "swimming" undertaken on 8 April 2018 on Google yielded results for swimming pools and results from the Commonwealth Games

⁶ <http://fortune.com/2017/01/04/google-facebook-ad-industry/>

⁷ See also COMP/M.5727 *Microsoft/Yahoo!* [2010].

swimming events, whereas the same search on Google Shopping and Shopstyle produced in the first case for a range of swimming related items including swimming pools and inflatable toys and in the latter only for swimming related clothing;

- (ii) they tend to use different data sources. The main input for general search services originates from an automated process called “web crawling”, whereas many specialised search services rely on user input or information supplied by third parties;
 - (iii) they have additional revenue sources such as paid inclusion;
 - (iv) Google's development and market practices were consistent with these being provided in separate markets; and
- (c) there was limited substitutability between general search services and social networking sites in that:
- (i) they perform different functions. General search services help users to find content, whereas social media provides an opportunity to connect with users who may have a common interest;
 - (ii) while certain social networks offer a general search function on their websites, so that users do not need to leave the sites to perform a general search, none of these sites use its own general search technology. Instead, they rely on existing third party search services to power these searches; and
 - (iii) the volume of general searches performed on social networks represents only a small share of the total volume of general searches.

5.5 In Australia, market definition involves the application of similar principles. Section 4E of the Act provides that a market includes goods or services that are substitutable for, or otherwise competitive with, the goods or services under analysis. Accordingly, substitution is key to market definition.

5.6 In coming to the conclusion that general search products are in a separate and distinct market, the EC inferentially held that social media platforms are in a separate and distinct product market. SWM is not aware of any competition decisions in which such a finding has been directly made, however, it is consistent with the supply and demand substitutability set out in the EC Google Decision.

6. **The market for digital social media platforms**

6.1 There is no established definition for social media platforms, but they can be generally described as a service which enables users to connect, share, communicate and express themselves online or through a mobile app. Different consumer offerings include Facebook, LinkedIn; Google+; MySpace, Pinterest, Nabo and Instagram (which is owned by Facebook). Online social networking services business models vary considerably and are constantly evolving.

6.2 Consistent with the analysis in the EC Google Shopping case discussed, SWM submits that there is a separate and distinct market for social media platforms.

6.3 Indeed, the Commission is well-aware of the growing importance of social media platforms, which have a significant impact on consumers and the economy as a whole:⁸

Social media (such as Facebook, Twitter, YouTube, blogs and customer review sites) has become an important medium through which businesses provide information about and promote their goods and services to consumers. It can be used to attract new customers, to invite comments or reviews about products, and to comment on competitors' goods and services. ... Social media is generally much less formal than traditional means of communication and will often be used without the level of pre-publication scrutiny that normally accompanies radio, television and newspaper advertisements.

7. Distinguishing the services provided on each side of the double sided market in which digital platforms provide services

7.1 There is an important distinction to be drawn between the services provided on each side of the double sided market. On the one side there are the search, social media and traditional media (television, newspapers, magazines) and other providers of an audience and on the other side, the advertising services provided by those platforms. Even though the platforms may serve quite different functions for consumers, each have in common with one another the fact that they facilitate double sided markets in which they attract eyeballs by providing content and they sell advertising services.

7.2 Google and Facebook in particular leverage their market power in the search and social media services that they provide into a service that they each provide. For example, Facebook competes for audience attention through its network, and can sell this audience attention to advertisers. Facebook is an ad-supported business model, as Mark Zuckerberg has recently stated in his testimony before a joint session between the Senate Judiciary and Commerce committees, "we want to offer a free service anyone can afford... It's the only way we can reach billions of people".⁹ Whether or not they provide advertising services in the same market or in separate markets, it is a service they each provide and it is clear that Google and Facebook are taking significant revenue from other market participants.

7.3 Two-sided markets are characterised by interaction between the demands of the two groups. For example, the demand by readers for online news is partly related to the amount of advertising shown, while demand for advertising online is partly related to the number of readers that will ultimately view the advertisement. Such cross-platform externalities have important implications for pricing and quality as platforms try to get both sides of the market "on board". For example, FTA television sets a zero price for viewers, whilst earning revenue from the advertiser side of the market. Any reduction in quality of the content will result in a loss of viewers, with a corresponding loss of attraction for advertisers due to the cross-platform externalities. Because advertising revenue is the primary source of revenue, platforms do not want to reduce content

⁸ ACCC Instructor's Manual for Social Media:

<https://www.accc.gov.au/system/files/Instructors%20Manual%20for%20Module%2011%20-%20Social%20Media%20%28PDF%29%20-%20Tertiary%20Online%20Education%20Program.PDF> p 2.

⁹ <https://www.smh.com.au/world/north-america/i-m-sorry-zuckerberg-opens-senate-hearing-with-an-apology-20180411-p4z8vd.html>.

quality if that is likely to lead to reduced advertising demand. However, a reduction in advertising revenue to content creators means they have less to spend on creating new content.

- 7.4 The network externalities that derive from two sided markets are different from the network effects of Google and Facebook which stem from the fact that the more consumers use the service, the more valuable it becomes. For example, Google's network effects have been explained in the following way: "*Scale begets scale... While Google did come up with the best search engine on the market... it was its early success that provided it with the experience and crucially the data to allow it to improve quickly. The more you know about what people mean when they search, the more you are able to deliver accurate results ... There are a lot of costs associated with that, processing, the data centres to support that. So there is a natural monopoly*".¹⁰ These network effects in turn make it harder and harder for others to compete with Google because the service they provide is not as good. That higher level of service originates from that particular network effect.
- 7.5 Google and Facebook are able to tap into the rich user data that they have based on these network effects, to deliver targeted advertising services that are difficult to match. Fundamentally, "*Google and Facebook have orders of magnitude more data than their nearest competitors, and more ways to slice and dice it*".¹¹ Google uses its access to this data, not just in its search results or within Google owned sites such as YouTube, but in the digital advertising market more broadly, to driving more advertisers to buy inventory across the Google Ad Network and to benefit Google's Adtech offerings Google AdSense and DoubleClick (which are tech services Google offers to online publishers to serve advertising). It is clear that Google is using its market power in the search market, and the data this provides, to extend its dominance further into the advertising services market.
- 7.6 In 2017 New York-based venture investor Fred Wilson predicted that "*the ad:tech market will go the way of search, social, and mobile as investors and entrepreneurs concede that Google and Facebook have won and everyone else has lost. It will be nearly impossible to raise money for an online advertising business in 2017.*"¹²

8. Market Power

- 8.1 Market power can be defined as the ability of a firm to profitably increase their prices over a period of time,¹³ but market power has aspects other than an influence upon price. As identified by Dawson J in *Queensland Wire*:

*"The term 'market power' is ordinarily taken to be a reference to the power to raise price by restricting output in a sustainable manner. ... But market power has aspects other than influence upon the market price. It may be manifested by practices directed at excluding competition such as exclusive dealing, tying arrangements, predatory pricing or refusing to deal... The ability to engage persistently in these practice may be as indicative of market power as the ability to influence prices."*¹⁴

¹⁰ <http://www.bbc.com/news/business-35460398>.

¹¹ <http://fortune.com/2017/01/04/google-facebook-ad-industry/>

¹² <http://fortune.com/2017/01/04/google-facebook-ad-industry/>

¹³ *Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd* [1989] HCA 6

¹⁴ *Ibid* at [insert].

- 8.2 Moreover, in *Boral Besser Masonry Ltd v ACCC*, Gleeson CJ and Callinan J identified the absence of constraint as a key element of market power [121]:

"The essence of power is absence of constraint. Market power in a supplier is absence of constraint from the conduct of competitors or customers. This is reflected in the terms of s 46(3). Matters of degree are involved, but when a question of the degree of market power enjoyed by a supplier arises, the statute directs attention to the extent to which the conduct of the firm is constrained by the conduct of its competitors or its customers."

- 8.3 Thus, market power can be thought of as the power to behave in a market, for a sustained period, in a manner not constrained by competitors in that market.¹⁵ It is SWM's submission that both Google and Facebook enjoy significant market power in the markets for search series and social media respectively. Unconstrained by neither competitors nor regulation, Google and Facebook are engaged in activities in the two-sided market for the supply of advertising services which ultimately hinders traditional media in connection with:

- (a) their ability to develop and market quality journalism and media content; and
- (b) their ability to monetise content developed.

9. **Google has market power in the market for general digital search services**

Market Share

- 9.1 There are some alternative providers of search services in Australia, they include Bing; Yahoo!, DuckDuckGo, Baidu and MSN. However, SWM submits that these search engines are only weak substitutes for Google given the significant market share held by Google, coupled with the barriers to entry and the expansion and network effects described below.
- 9.2 In terms of search engine market share in Australia, in the 12 months from March 2017 to March 2018, Google's market share is measured at 93.73% of the market. The next closest competitor is Bing with 4.76%; followed by Yahoo! at 0.61%, DuckDuckGo at 0.33%, Baidu at 0.32% and MSN at 0.09%. These market shares are represented in the Figure 2 below:¹⁶

¹⁵ *Melway Publishing Pty Ltd v Robert Hicks Pty Ltd* [2001] HCA 13

¹⁶ <http://gs.statcounter.com/search-engine-market-share/all/australia>

Figure 3



- 9.3 This is consistent with the statement in the Issues Paper that Google provides 95% of digital search services in Australia.
- 9.4 Google's position as the clear leader in terms of market share for search services has remained unchanged for a significant period. Even recognising that market share is not solely determinative of market power, Google's very dominant position over a significant period means that it is unlikely to be constrained by competitors, and further, this makes it an unavoidable trading partner. It is Google's position as an unavoidable trading partner which gives rise to competition concerns in connection with the market for advertising services, expanded below.

Barriers to entry and expansion

- 9.5 As the Commission identifies in its Merger Guidelines, there are some markets where barriers to entry either prevent or impede firms from entering altogether such that the incumbent is sheltered from competitive constraint. The market for the provision of general search services is one such market where penetration from new or incumbent players is reduced by significant barriers to entry. Those barriers include the

significant time and cost involved in establishing a search engine and the substantial data Google now holds.¹⁷

- 9.6 Moreover, Google enjoys positive network effects which make its platform more attractive to users and content providers on both sides of the platform. When user numbers in each group increase, it is difficult for new entrants or other incumbents to compete with Google. Google's explanation for its large share of the search market is that "*it is a finely honed learning machine. Its scientists constantly improve the relevance of search results for users and the efficiency of its advertising system for advertisers and publishers*".¹⁸ In other words, data and network effects play a key role in Google's dominance.
- 9.7 For these reasons, SWM submits that Google holds substantial market power in the market for the provision of internet search services and that other competitors like Bing are diminishing in significance.

10. Facebook has market power in the market for social media platforms

Market share

- 10.1 As noted in the Issues Paper, as at 2016, it was estimated that 15 million Australians use Facebook monthly and more than 210 million people on Facebook globally are connected to the Facebook Page of an Australian business. Further, recent Australian surveys suggest that 95 per cent of Australian consumers who use social networking used Facebook.
- 10.2 At the 2-day U.S. Senate Hearing concerning the Cambridge Analytica data privacy breach, Mark Zuckerberg was asked whether Facebook constitutes a monopoly. Mr Zuckerberg pointed to other technology giants — Google, Apple, Amazon and Microsoft — but noted that while their services overlap, they don't match Facebook, data point for data point.¹⁹

Barriers to entry and expansion

- 10.3 Whilst social network sites may be characterised by low barriers to entry, they depend on network effects and data for ongoing viability. Given the position that Facebook occupies, it clearly has market power and it is also viewed as an unavoidable trading partner in particular given its position as a significant driver of traffic to traditional media's digital sites and therefore products and services offered by traditional media.

11. The affected advertising markets

- 11.1 SWM provides advertising across a range of platforms: FTA television, print (newspapers and magazine) and digital.
- 11.2 The impact of digital platforms on advertising services can be readily seen from the material in section 3.1.1 of the submission lodged by Free TV, which shows that there has been a decade of growth in online advertising revenue²⁰. The data shows that while there has not been a significant change in the overall level of advertising spend

¹⁷ This was identified in the EC Infringement Decision at paragraph [286].

¹⁸ <https://www.nytimes.com/2008/07/07/technology/07iht-07google.14282611.html>

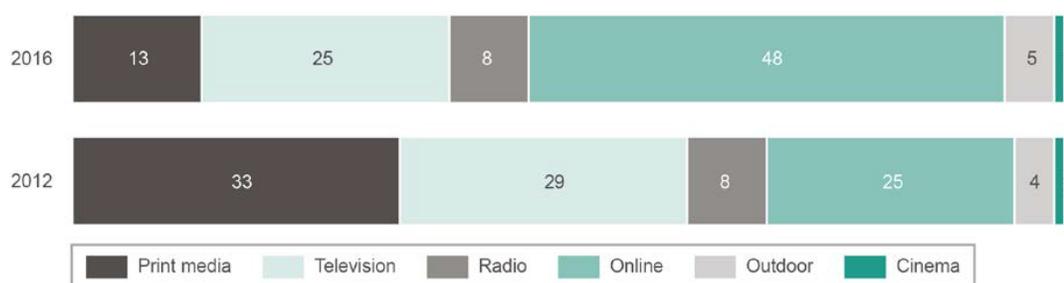
¹⁹ <http://www.abc.net.au/news/science/2018-04-12/facebook-mark-zuckerberg-congress-regulation-inevitable/9636536>

²⁰ See Figure [3] of the Free TV Submission

in the last decade, there has been a significant increase in online advertising with decreases in traditional media. That decrease has been greatest in print but also felt in television.

11.3 Commercial Economic Advisory Service of Australia (CEASA) data for the year ended 31 December 2016 published in the Australian Communications and Media Authority (ACMA) report 2016/2017 in Figure 4 below shows that over the period from 2012 to 2016, the share of overall advertising expenditure in print media and television has contracted with print media seeing the largest contraction from 33% share of total spend in 2012 to only 13% share in 2016 and television contracting from 29% share of total spend in 2012 to 25% share of total spend in 2016. However, online advertising experienced almost a 100% increase in share of total advertising spend from 24% in 2012 to 48% share in 2016.

Figure J: Comparison of market share in advertising spend from 2012 to 2016



Source: CEASA data for the year ended 31 December 2016, as reported in ACMA report pp 40.

11.4 Further, it cannot be said that the growth in online advertising spend has "grown the pie" in terms of overall advertising spend. The percentage growth in overall advertising spend has been eclipsed by the share of spend attributed to online advertising. Ultimately, this impacts SWM's ability to deliver quality content to its audiences, which is detailed in section 12 below.

11.5 As noted in section 4, there is a question about whether the market for the provision of advertising services has ceased to be platform specific (e.g. television, newspaper, internet) and has now become integrated across all or at least a number of platforms or whether there is still not sufficient price correlation to say that there is an integrated market. Historically, the Commission has tended to identify platform specific markets for the supply of advertising services²¹ however, more recently, it has recognised the significant competition that exists between platforms: Seven West Media Limited - proposed acquisition of The Sunday Times publication and website from News Limited²². The EC has been following a similar evolution to that of the Commission, traditionally finding separate platform specific advertising markets²³ but increasingly recognising convergence between platforms.

11.6 For the purposes of this Inquiry, no concluded view is necessary. What is clear is that advertising spend is split across a range of different media including FTA television;

²¹ For example, see ACCC Media Mergers guidelines, August 2006, p5
<https://www.accc.gov.au/system/files/Media%20Mergers%20-%202011.pdf>

²² <http://registers.accc.gov.au/content/index.phtml/itemId/1198464/fromItemId/751043>

²³ *Viacom/Channel 5 Broadcasting COMP/M.7288* [2014]

radio; newspapers; magazines; and online spend and that each of these media represent a different value proposition to advertisers. Whilst over time total media spend has not changed significantly, there has been significant growth of online advertising at the expense of advertising through other media.

- 11.7 One reason for the increase in online spend is likely the perceived benefit of the extensive nature of the consumer data that platforms such as Google and Facebook.
- 11.8 A Facebook profile generally contains a range of useful information for marketers, such as age, gender, location, education level and relationship status. In addition to this Facebook collects information, such as pages liked, posts commented on, friends and device location. It has been claimed that Facebook tracks user behaviours on other sites while users are logged on to Facebook, that Facebook may even continue to track behaviours after a user has logged off²⁴ and that Facebook can even identify the personality traits and moods of individual users. Leaving to one side the significant ethical and regulatory issues connected with mass-surveillance of this scale, clearly this data provides an enormous competitive advantage in the advertising market as well as a barrier to entry for competitors.
- 11.9 From a market definition perspective, the shift to online advertising can be considered either as:
- (a) market boundaries shifting as a result of disruptive technologies; or
 - (b) a significant degree of competitive constraint coming from "out of market" or adjacent markets.
- 11.10 In the supply of advertising services, search engines and social media platforms enjoy significant advantages over more traditional media. Those advantages arise from:
- (a) the lower cost of their operating model (with most of their content being provided by others without remuneration and these platforms having so social contract obligations); and
 - (b) the extensive ability to collect and use data provided by consumers to enable advertisers to target advertising with a higher degree of specificity.
- 11.11 If this continues and undermines the revenue available from advertising on other platforms, then these digital platforms will become dominant in the entire advertising services market(s) and further marginalise other advertising platforms. The consequence is that those platforms will have less ability to spend on content, including news and journalistic content and, in the case of FTA television, fulfil other aspects of their social contract obligations.
- 11.12 A related issue is the unverified and potentially misleading audience metrics supplied by Google and Facebook to advertisers. In particular we note:
- (a) for FTA platforms, the OzTAM audience statistics that form the basis of trade with advertisers are gold standard third party verified. Similarly, the performance of SWM's digital video platforms such as 7Plus is also independently verified via the OzTAM Video Player Measurement (VPM) SDK;

²⁴ When asked about this at the US joint hearing of the Senate Judiciary and Commerce Committees on [INSERT] CEO Mark Zuckerberg claimed he did not know whether or not this was true.

- (b) by contrast, Google (including YouTube) and Facebook self-report performance to advertisers based on their own internal data and have been reluctant to allow third party verification;
- (c) the metrics used by Google and Facebook are very different to those used by traditional media. SWM considers that these metrics are likely to mislead advertisers into believing that campaigns on those platforms are reaching a greater audience than they actually are. For example, counting an ad as “viewed” where it is displayed for only 1 second and only half the ad is within screen. By contrast, if a television network ran an ad for 1 second and was partially covered by other content on screen the advertiser would ask for their money back;
- (d) Facebook in particular has repeatedly been forced to acknowledge that its metrics are wrong – such as calculating “average watch time” for videos disregarding those that watched for less than 3 seconds, and miscalculating the number of likes and reactions that page owners see for their live video. Facebook also continues to claim a greater reach in certain demographics than the applicable total population according to the census; and
- (e) while the websites of mainstream media and most other significant online businesses allow Nielsen to install a Software Development Kit (SDK) on their sites and apps in order to allow digital rating information to be collected and verified, Google (including YouTube) and Facebook have not implemented the SDK and therefore Nielsen does not have access to the same metrics for those sites and their audience cannot be reported by Nielsen with the same degree of granularity. General statistics on the overall usage of these sites are reported solely in the Digital Monthly Ratings which estimates traffic to these sites based on a sample panel that have Nielsen software installed on their devices.

11.13 With these limitations, it is difficult to have like-for-like information and SWM is concerned that appropriate comparisons are not being made with the consequence that digital search engines and social media platforms are able to overstate their reach and effectiveness to increase their attraction to advertisers. This problem arises from the lack of transparency in the collection of digital data and the fact that neither Google nor Facebook are participating fully in the measurement mechanisms available.

11.14 In SWM's submission, it is not a sufficient answer simply to say that, over time, advertisers will discover whether Google and Facebook are in fact delivering the advertising viewership promised, and if they are not, advertisers (and market forces) will shift advertising spend to other platforms to more optimally achieve the viewership desired. Not all advertisers have access to the resources and analysis necessary to measure the impact of their advertising spend. Many may rely on promises, assurances and inflated data made available to them by Facebook and Google. Rather, it is SWM's submission that all industry players offering advertising services to advertisers should be subjected to comparable metrics that are verified so that competitors for advertising dollars compete on a level playing field.

11.15 One way to address this would be for there to be Commission (or Government) endorsed metrics and requirements for third party verification so that advertisers can ask for reliable and relevantly comparable consumer reach and effectiveness information in determining their spend.

12. **Impact in content markets**

- 12.1 A separate but related problem exists in content markets. The content that attracts users is not provided by either Google or Facebook. It is content provided by users or professional content businesses. As detailed in section 7 in the Free TV submission, traditional media content is a key driver of value for general digital search engines and social media platforms.
- 12.2 Given the two-sided nature of the market, search engines and social media platforms, are able to:
- (a) attract users of search and entertainment services in connection with content for which they neither fund nor acquire at commercial value from content providers; and
 - (b) monetise that 'free' content through advertising revenues accruing to it.
- 12.3 This and the network effects operating in this area, were recognised by the EC in its Google Shopping decision where it found:
- "... The positive feedback effects on the online search advertising side are due to the link between the number of users of a general search service and the value of the online search advertisements shown by that general search engine. The higher the number of users of a general search service, the greater the likelihood that a given search advertisement is matched to a user and converted into a sale. This in turn increases the price that a general search engine can charge advertisers if their search advertisements are clicked on. The general search engine can then reinvest that revenue in seeking to attract new users of its general search service".*
- 12.4 As a result of these issues, these platforms are getting 'hits', or unique audience views, for content that they have not incurred costs to produce but the platforms are collecting and retaining the valuable user data and advertising revenue. In essence it is a free-rider problem. Without some intervention, there will be a reduction in quality and supply of content. Given the broader social implications, this is not just a question of the commercial interests of the traditional media sector.
- 12.5 A comparison of total program spend in television from the years 2012/13²⁵ and the most recently reported figures from 2015/17²⁶ shows that;
- (a) there has been a modest increase in program spend on Australian News and Current affairs (from \$359 million in 2012/13 to \$384 million in 2015/16); and
 - (b) there has been a modest increase in total Australian program spend (from \$1,403 million in 2012/13 to \$1,503 million in 2015/16).
- 12.6 In the face of declining revenues, investment in Australian television programming continues. However, allocating funding for that content creation in the face of increasing production costs and falling advertising revenues means that some types of

²⁵ Broadcasting Financial Results 2012-13 Commercial radio and television aggregated licence data October 2014.

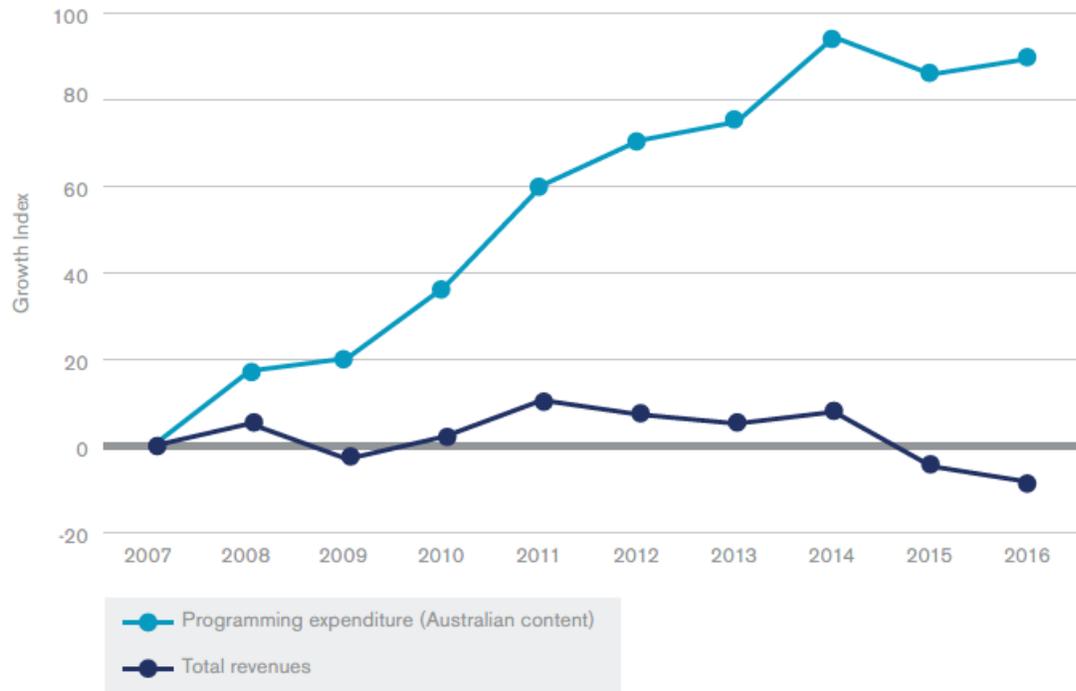
²⁶ Broadcasting financial results 2015–16 Commercial radio and television aggregated licence data September 2017.

content cannot be sustained in the long run without increased Government support, unless steps are taken to address the free rider issue.

12.7 Figure 6 below depicts the increasing production costs of FTA television against total revenues demonstrating the declining revenues against the increasing costs of production.

Figure 6

Figure 8: Commercial free-to-air revenues and spending on Australian content



Source: Analysis prepared for Free TV Australia by Venture Consulting, April 2017.

12.8 These trends of falling advertising revenues and increasing production costs are cause for concern in terms of the future sustainability of Australian television content production.

12.9 In the case of newspapers, in the last 5 years the number of Australians reading print newspapers has declined from 14 million in 2013 to 12.8 million in 2017²⁷. While digital news readership has increased over the same period, only around 13% of Australians pay for access to online news²⁸. There is no doubt that Google's *first click free* feature has significantly hindered the ability of print media companies to transition paying print subscribers to paying digital subscribers and even although the feature has now been abandoned it has created a user expectation that online news should be free.

²⁷ Enhanced Media Metrics Australia (emma) readership data.

²⁸ Reuters Institute Digital News Report 2017

- 12.10 From 2011-2015 Australian newspapers and magazine publishers lost \$1.5 billion and \$349 million respectively in print advertising revenue and PWC forecasts further declines of around 39% by 2021.
- 12.11 SWM is engaged in costs-saving and business transformation strategies and to find greater efficiencies and reduce operational costs. SWM has announced a headcount reduction for the television side of its business which aims to result in a cost saving of \$25 million per annum.²⁹ It is also engaged in an ongoing cost reduction plan for its print media division including a targeted \$10 million cost reduction³⁰ in addition to the efficiencies achieved from the merger of WAN with The Sunday Times/Perth Now.
- 12.12 The advertiser funded business model, that has supported the creation of high quality news and other valuable high quality Australian content will not be sustainable in the long run if Google and Facebook continue to exercise their market power to the detriment of traditional media.

13. **Mechanisms to address the free rider problem**

13.1 There is no reason why digital platforms, whether general search engines or social media platforms, should be using traditional media content without payment. Unless some mechanism is introduced to address this issue, the distortionary effect in content markets will continue. Content developed at cost to traditional media drives traffic to digital platforms without reward to the content supplier. This will:

- (a) undermine the ability of the content supplier to continue to invest in content;
- (b) impact the ability of the content supplier to deliver the social benefits that are part of its social contract reflected in its licence arrangements; and
- (c) adversely affect the viability of the content supplier.

13.2 This issue is a well-recognised property rights issue with public good characteristics. It has been dealt with in the music industry by a licensing arrangement and it may be that a mechanism of this sought needs to be developed in this context.

The social contract underlying the FTA licence to operate and asymmetric regulation

13.3 As discussed earlier, FTA television is subject to significant regulatory obligations arising from the Broadcasting Services Act and licence conditions. A detailed summary of these obligations is set out at Sections 4 of the FreeTV Submission. These include: Australian Content requirements (including quotas for drama, documentary and children's programming); classification and advertising restrictions that maintain a safe environment for families and for advertisers; news accuracy and impartiality requirements; and accessibility obligations such as captioning for hearing impaired viewers. The content that we broadcast is cleared for copyright and licence fees are paid where required.

13.4 Similarly newspapers are subject to code of conduct obligations which require publications to take all reasonable steps to ensure reports are honest, accurate,

²⁹ Media release, *SWM West Media releases interim financial results for half year ended 30 December 2017*, released 20 February 2018 (<http://www.SWMwestmedia.com.au/assets/pdfs/180220-SWM-Half-Year-Results.pdf>).

³⁰ <http://www.newsmediaworks.com.au/SWM-west-eyes-industry-consolidation/>

balanced and fair and disclose all essential facts and to provide a contemporaneous right of reply

- 13.5 Not only do we rigorously check and moderate all content before it is broadcast or published, but our media platforms are also subject to complaints handling obligations and oversight that ensures errors are corrected and inappropriate content is withdrawn from further circulation.
- 13.6 The quality and the broad social value of the services that we provide remain incredibly high. Our award-winning journalists have broken stories that hold governments and corporates to account, informing citizens of government policies and the actions of public institutions and the courts and disseminating important public health and safety information. In regional areas we also ensure the coverage of local issues.
- 13.7 The contrast between our media platforms and Google/Facebook could not be more stark.
- (a) We spend millions of dollars each year creating content, employing Australian journalists and performers, engaging Australian production companies and licensing material from local photographers, musicians, writers and producers.
 - (b) We create high quality and engaging Australian content like *Home and Away* that has been beloved for generations, has provided the vital training ground for some of Australia's biggest stars and played a role in selling Australia to the world as a desirable destination for tourism and business;
 - (c) We care about providing an environment where brand safety is paramount;
 - (d) We care about the quality, truth and accuracy of the material we report and the vital role this plays in maintaining a free and democratic society;
 - (e) We provide information, entertainment, sport and drama for free to millions of Australians and without requiring the provision any personal information to access it.
- 13.8 In light of the threats to democracy from "click-bait", "fake news" and the filter-bubble of social media, the counter-balance of truth provided by professional media organisations has never been more important.
- 13.9 Our media businesses compete with digital platforms for advertising revenue but at a significant cost disadvantage because of these social obligations and responsibilities.
- 13.10 Given the positive externalities that flow from these contributions, it would be appropriate to seek to impose a community service levy of some kind on dominant search engine services and social media platforms to recognise the cost that the professional media is bearing which these platforms are taking advantage of.
14. **Both Google and Facebook are unavoidable trading partners**
- 14.1 There is a complex relationship between traditional media and digital platforms. On the one hand as noted above, there is competitive tension concerning the competition

for advertising dollars. However, the digital platform are also a significant service provider to traditional media and in many cases have become an unavoidable trading partner for traditional media because they serve as an important source of traffic for content providers.³¹

- 14.2 Changing patterns of media consumption fuelled by online and technological advances in smartphones and tablets means that more than ever before consumers have greater choice as to how and when they access news and entertainment content. On 23 March 2017, Nielsen announced that Australia's online unique audience reached 20 million for the first time during February 2017.³² Australia's current total population is projected to be 24,905,656.³³
- 14.3 To meet these changing demand patterns, many of SWM's content divisions also maintain a digital presence. This digital presence includes websites which support the Pacific Magazines business; its Newspaper business and SWM's television programming. In order to drive traffic to these sites, SWM engages with Google and Facebook and derives traffic from those platforms.
- 14.4 In terms of service relationships with Google, SWM engages with Google in respect of its paid search function, AdWords, in order to generate traffic to its websites as well as relying on organic searches. SWM also generates significant traffic to its websites from Facebook.
- 14.5 On average in the last 12 months, across SWM's various digital properties, around a third of traffic comes from Facebook, a third Google (via paid and organic search), with the remainder coming from other sources (such as click-through from another website or EDM or direct entry of the web address into a browser. However there is significant variability across the different sites, with some having more than 50% of traffic from Facebook.
- 14.6 Given the extent of traffic that is generated from these two platforms it is clear that SWM must engage with Google and Facebook to maintain digital visibility. For many internet users, Google and Facebook are the internet, because they are the gateway through which all other digital information and entertainment is sourced. In essence all businesses in Australia are subject to this same issue of dealing with these two gateway providers of digital discoverability if they wish to engage in the online market, including the market for ideas. However this issue of control over discoverability is particularly acute for media businesses because, as more revenue and eyeballs move online, a successful digital strategy is critical to enabling traditional media businesses to transition their services and their business model to one that is able to effectively monetise content online.
- 14.7 Google's first click free requirement for news outlets (now abandoned) is a critical example of the way control over discoverability has been used to hinder traditional media businesses from being able to transition to a digital subscription model
- 14.8 Similarly, Facebook's recent algorithm change demonstrates its strength of bargaining position and absence of competitive constraint. On 11 January 2018, Facebook announced changes to its News Feed algorithm to "*prioritize posts that spark*

³¹ Venture Insights, "The Importance of News Content" March 2018 at page 8.

³² Neilson, *Australia's Online Audience Hits 20 Million*, 23 March 2017 (<http://www.nielsen.com/au/en/press-room/2017/australia-online-audience-hits-20-million.html>).

³³ Australian Bureau of Statistics, Population Clock as at 16 April 2018 (<http://www.abs.gov.au/ausstats/abs@.nsf/0/1647509ef7e25faaca2568a900154b63?OpenDocument>).

conversations and meaningful interactions between people" and to "prioritise posts from friends and family over public content".³⁴ This change has had a significant impact.

- 14.9 For example, traffic from Facebook to some Pacific Magazines sites has fallen around 40% from what it was in June 2017 to now.
- 14.10 Prior to the algorithm change Pacific Magazines had invested significant money and resources to attract followers to its various Facebook pages. This investment included engaging Facebook through its online advertising platform to conduct promotional activities aimed at boosting followers. These strategies were successful and some of those Facebook pages have over a million likes and followers. Once a Facebook page had been followed the posts to that page automatically “organically” appeared in the Facebook News Feed of those followers. However, the changes to Facebook’s News Feed algorithm now mean that Facebook will not publish Pacific Magazines’ content organically in the News Feed of those followers, or will deprioritise those posts, unless Pacific Magazines pays. To reach the same audience that was previously being reached organically would cost millions of dollars.
15. While the majority of Pacific’s traffic now comes from Google rather than Facebook, there is nothing to prevent Google from implementing similar changes to its algorithm, and demanding payment for appearance in search results which used to occur organically.
- 15.1 In summary, the unilateral change to Facebook’s algorithm demonstrates its dominant position and lack of competitive constraints and lack of countervailing power from customers of its services. All content businesses within Australia are beholden to Google and Facebook in this same way, and despite the value that we are providing to these platforms in term of compelling content, we have limited ability to negotiate and no transparency or certainty in our business dealings with these platforms.
- 15.2 Consideration should be given to regulating these platforms as providers of essential services, both to businesses and to consumers. In particular in relation to data, which is the monopoly rent these platforms are extracting from end users, we believe Australian consumers now regard these platforms as an essential and unavoidable part of modern existence. For this reason, our existing privacy laws, which are primarily based around disclosure and consent, may need to be reconsidered in light of the unavoidable nature of these platforms and the scale and nature of the surveillance being conducted.
16. **Systematic acquisition of start-ups**
- 16.1 Separate from developments that come as the result of research and innovation, Google and Facebook have become acquirers of small disrupter start-ups. Whilst one off acquisitions may be unremarkable, a series of acquisitions over time has the potential to cause significant competition concerns and remove precisely those firms that may be innovative competitors to Google and Facebook.
- 16.2 This issue has been recognised by the ACCC, in particular, in two speeches by the ACCC Chairman in late 2016. The first was made on 27 October 2016 at the RBB

³⁴ Facebook Newsroom media release, *Bringing People Closer Together*, 11 January 2018 (<https://newsroom.fb.com/news/2018/01/news-feed-fyi-bringing-people-closer-together/>).

Economics Conference³⁵ in which he commented on an article in The Economist questioning whether antitrust agencies are sufficiently alert to the long-term consequences of large firms acquiring promising start-ups and the risk that allowing such acquisitions risks entrenching the control superstar firms have over entire markets.

- 16.3 As the ACCC Chairman recognised, there are challenges in such acquisitions, or a pattern of such acquisitions. How do you predict and assess the impact such acquisitions may have on competition in dynamic markets. To properly address these issues may need a revisiting of how a series of start-up acquisitions are viewed. This would likely involve some form of regulatory change and is an appropriate topic for further consideration of this Inquiry.

³⁵ <https://www.accc.gov.au/speech/keynote-address-rbb-economics-conference-0>; see also <http://www.afr.com/technology/accc-chair-rod-sims-eyes-potential-regulatory-reform-to-police-startup-buyouts-20161027-gsc6k4#ixzz5DBZVY3Hs>