

**SBS SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
MANDATORY NEWS MEDIA BARGAINING CODE – CONCEPTS PAPER
JUNE 2020**

Key Points

- The Special Broadcasting Service Corporation (**SBS**) is unique in the Australian media environment, with a principal function of providing multilingual, multicultural and Indigenous radio, television and digital media services. SBS provides extensive news and current affairs content across a range of platforms, including digital platforms operated by Google and Facebook.
- SBS supports the development of a bargaining code (the **Code**) to ensure that fair, impartial balanced, accurate and trustworthy news and current affairs is readily accessible to all Australians by being well-represented on digital platforms. The bargaining power between major digital platform operators and news media organisations must be appropriately balanced so news providers are adequately compensated for their content and have access to the information needed to best serve their audiences.
- The definition of 'news content' in the Code should capture material that is subject to professional standards or a media industry code, such as the SBS Codes of Practice. It should include, but be broader than, the ACCC's definition of 'public interest journalism'.
- The Code should make provisions for collective bargaining, while also allowing flexibility for individual news media businesses to continue to agree individual commercial arrangements with the digital platforms, either as part of or outside of the Code processes.
- There are a number of areas in which improved transparency, such as advance notification of changes, would contribute positively towards news media businesses' interactions with digital platforms. This includes issues in relation to algorithm changes; outages; and the launch of new products. Advance notice is particularly important where the change will require news media businesses such as SBS to significantly re-engineer their digital products or processes to align with the changed platform settings.
- Prioritisation of original news content is of particular importance to news media businesses which invest significant time and resources in the creation of content which meets the needs of Australian audiences.
- Trustworthy news is a public good which underpins effective democracy. It is in everyone's interest for all Australians to have access to quality, public interest

journalism. Major digital platforms should be required to give it the prominence that audiences deserve in order to be accurately informed.

- News media businesses would also benefit from mechanisms setting out requirements for digital platforms to grant them a greater degree of control over display and presentation of their news content.
- While not raised in the Concepts Paper, the Code should include a commitment from digital platforms to the enforcement of content removal for legal reasons.
- Likewise, the Code should include consideration of the availability of enhanced moderation tools, to provide news media businesses greater autonomy in managing user-generated content on digital platforms. This will assist new media businesses to manage their legal risk on third party platforms on which audiences expect to find their content, but over which they do not have full control.

Introduction

SBS appreciates the opportunity to respond to the *Mandatory news media bargaining code – Concepts paper* (the **Concepts Paper**), published by the Australian Competition and Consumer Commission (**ACCC**) in May 2020.

SBS is unique in the Australian media environment, with a principal function of providing multilingual, multicultural and Indigenous radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.¹

SBS reaches Australians through its five free to air television channels (SBS, SBS VICELAND, SBS World Movies, SBS FOOD and National Indigenous Television (**NITV**)), seven radio stations broadcasting in 63 languages other than English (with audio content also available via the SBS Radio App). SBS On Demand, SBS's video-on-demand service², provides more than 7,000 hours of exclusive and distinctive content across key genres such as drama, film and documentary, including SBS commissioned Australian content—a vast collection of which are stories otherwise untold by other media.

SBS provides extensive news and current affairs content across its television, radio and digital platforms, in English and 63 other languages. As evidenced during the COVID-19 crisis, SBS provides vital information and analysis to Australian audiences, in their preferred language.³ SBS also has a significant presence on digital platforms, including those operated by Facebook and Google. This presence is vital to reaching audiences who prefer to receive their news through digital platforms.

SBS supports the development of a bargaining code. As noted by the ACCC, the aim of this code is to '...address bargaining power imbalances between Australian news media businesses and digital platforms'.⁴

¹ SBS [Charter](#).

² SBS On Demand <https://www.sbs.com.au/ondemand>

³ Reaching all Australians with vital public health information has been essential to saving lives during the COVID-19 crisis. SBS has rolled-out tailored information across platforms, including: SBS Radio's Multilingual Coronavirus Portal in 63 languages; news coverage by, for and about First Australians with NITV's news and current affairs coverage extended to provide a daily news service, seven days a week; and, SBS television and digital news services providing daily comprehensive coverage on the impact of the crisis across the globe—including numerous live crosses to countries most heavily impacted by the virus. Prominence of this unique and essential news coverage across major digital platforms has never been more important than during the crisis.

⁴ Concepts Paper, page 1

The principles by which SBS would judge the appropriateness of the Code include:

- Fair, impartial, balanced, accurate, trustworthy news and current affairs—such as SBS produces—should be prominent. This helps counter disinformation which degrades debate on matters of public interest and has adverse impacts on effective democracy.
- As a public good principally funded by tax payers, citizens have a right to expect to be able to access SBS content wherever they may be, including on digital platforms to better reflect Australia's multicultural society and to promote social cohesion.
- The platforms are of value to news providers like SBS—we have to be where our audiences are, and they are on those platforms (high volumes of referral traffic for both SBS's English and non-English news and information sites come from the platforms).⁵
- However, there should be a better balance of negotiation power between major digital platforms and news media businesses, including through the provision of better information about how our audiences interact with the platforms.
- There should be fairer processes before material changes are made to algorithms that affect the display, presentation of, and users' interactions with our content.
- Any processes implemented under the Code framework have to be streamlined, so that the administrative burden to both parties does not exceed the benefits received.

Definition of news to be covered by the Code

The Concepts Paper notes that '[d]uring the ACCC's oversight of negotiations between news media businesses and Google and Facebook to develop voluntary bargaining codes, stakeholders expressed a wide range of opinions on how 'news' should be defined for the purpose of such codes...[t]he ACCC notes that some stakeholders also previously suggested that voluntary bargaining codes should apply beyond news content to cover a wider range of content produced by media businesses...'.⁶

The Code should, at minimum, apply to 'public interest journalism' as defined by the ACCC's Digital Platforms Inquiry:

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.⁷

However, there may be matters of public interest—such as sport, finance and weather—which may not be captured the definition of 'public interest journalism' set out above, but which should be captured by the Code. Therefore, it is appropriate that the Code define 'news' more broadly to capture content defined in other instruments as 'news' or 'current affairs'.

⁵ For example, in FY20 to date, 80% of the traffic for SBS's Australian-produced Cantonese news service has come via Facebook (source: Adobe Analytics – Visits July 2019 – April 2020).

⁶ Concepts Paper, page 3

⁷ DPI Final Report, page 285, cited in the Concepts Paper at page 3

For example, SBS language sites include factual information, produced by journalists and subject to the SBS Codes of Practice, to support civic, economic and cultural participation on matters such as filing a tax return, surf safety and how to find a playgroup. Similarly, SBS program *The Feed* and website *SBS Voices* also produce information that is still highly relevant to audiences but may not strictly fall within a confined definition of news.

The ACMA's *Investigation concepts – Accuracy* paper, finds that '...the obligation to present factual material accurately applies to news and current affairs programs'.⁸ The paper defines those terms as follows:

2.1 News programs

The commercial television code does not define news but states that the obligations cover 'news programs (including news flashes and updates)'.

By contrast, the commercial radio code defines a news program as:

... a Program, bulletin or news flash, the predominant purpose of which is to present factual new information on current events and which is typically prepared by journalists.

2.2 Current affairs programs

The commercial television code defines a current affairs program as:

... a program focussing on social, economic or political issues of current relevance to the community.⁹

The commercial radio code's definition of a current affairs program is similar to that of the commercial television code, but is more expansive and includes talkback radio programs:

... a Program the predominant purpose of which is to provide interviews, analysis, commentary or discussion, including open-line discussion with listeners, about current social, economic or political issues.

SBS prefers a more flexible approach, which would be for the Code to cover material which is 'produced in the course of journalism'. This is the approach Parliament took in developing the media exemption in the *Privacy Act 1988*, which is set out at subsection 7B(4) in the following terms:

Journalism

- (4) An act done, or practice engaged in, by a media organisation is *exempt* for the purposes of paragraph 7(1)(ee) if the act is done, or the practice is engaged in:
- (a) by the organisation in the course of journalism; and
 - (b) at a time when the organisation is publicly committed to observe standards that:
 - (i) deal with privacy in the context of the activities of a media organisation (whether or not the standards also deal with other matters); and
 - (ii) have been published in writing by the organisation or a person or body representing a class of media organisations.

SBS agrees that a definition of 'news content' should capture material that is subject to publicly-stated professional standards or a media industry code, such as the SBS Codes of Practice.¹⁰

⁸ Australian Communications and Media Authority, *Investigation concepts Accuracy*, <https://www.acma.gov.au/publications/2019-11/guide/investigation-concepts-accuracy>

⁹ Commercial television code, Part 8, 'Interpretation'.

¹⁰ <https://www.sbs.com.au/aboutus/sbs-codes-of-practice>

The SBS Codes of Practice set out the principles and policies SBS uses to guide its programming and to maintain its editorial independence and integrity. They set the benchmark for SBS content and detail SBS's obligations regarding matters such as providing a diversity of views and perspectives, accuracy, impartiality and balance in news and current affairs, television program classification, community information and complaints handling.

The strength and depth of codes of practice, such as those underpinning SBS's content, is essential to ensuring that the content covered by the Code is of the highest quality, and most valuable to users of the digital platforms.

Recommendation: The definition of news content should be sufficiently broad and flexible to incorporate information and current affairs. A formulation similar to the one in s7B(4) of the Privacy Act 1988 is preferred.

Digital platform services to be covered by the Code

The ACCC notes that '[t]he bargaining code will...initially apply only to Google and Facebook. However the ACCC intends for the code to include mechanisms to allow the addition of other digital platforms services...'.¹¹ In a digital landscape that is fast-moving and fast-changing, it is essential that a principles-based approach be applied to deciding the digital platforms services to be covered by the Code.

The ACCC notes that '...[b]oth Facebook and Google provide a wide range of services beyond their flagship consumer offerings...'.¹² It is appropriate in the first instance that the Code expressly include the services listed on pages 5 and 6 of the Concepts Paper, including YouTube.

While YouTube is owned by Google, it includes significantly different functionality, such as user comments, which raise issues separate to those needing consideration in relation to the flagship Search service.

However, in order to provide certainty to the digital platforms, as well as flexibility to respond to changes in the sector, it is recommended that a list of digital platforms covered by the code be published separately. This list should be reviewed annually by the ACCC against the principles established in the Code. Criteria for platform selection may include an audience number threshold.

Recommendation: The Code should provide an exhaustive list of services covered. Initially, this should include all services listed at page 5 and 6 of the ACCC Concepts papers. This list should be reviewed at least on an annual basis, and as required when new services are made available.

Establishing an effective bargaining framework

The Concepts Paper provides three options for a bargaining framework, while noting that there may be other frameworks that stakeholders consider appropriate. Of those listed the Code should provide for either bilateral negotiation or collective bargaining.

As noted in the Concepts Paper in relation to collective bargaining, '[u]nder such a framework, Australian news media businesses would be able to negotiate as a collective with each of Google and Facebook, in order to secure more favourable commercial

¹¹ Concepts Paper, page 4

¹² Concepts Paper, page 4

terms for the use of content than they might achieve through individual negotiations'.¹³ The Code should provide flexibility for collective bargaining on either an industry-wide basis, or among different combinations of new media providers. To increase efficiency, it should expressly permit collaboration of this sort so that authorisation under competition law is not required.

Reasonable time limits should be established for negotiations to be completed and agreement reached (noting that appropriate time will be required where a negotiation is collective); as well as for the responsiveness of parties within the course of negotiations. It may be appropriate for the ACCC to determine different cohorts to enable collective bargaining and even distinct sections of the Code for different news providers, noting for example, that News Corporation Australia is likely to have distinct requirements from a small independent publisher.

The Code should allow flexibility for individual news media businesses to continue to agree individual commercial arrangements with the digital platforms, both within and outside of the Code processes. An individual agreement within the Code process may, for example, cover regular posts on the Facebook newsfeed and in results in Google search, while agreements outside the Code may cover more specialised products or tailored services.

A number of news media organisations, including SBS, have negotiated individual arrangements with Facebook. The ability for individual news media businesses to continue to make agreements in this way, will remain beneficial in terms of remuneration and availability of content for consumers.

The Concepts Paper considers that '...the mandatory bargaining code could include mechanisms requiring parties to take certain prescribed factors into account when conducting negotiations regarding remuneration'.¹⁴

The value of news content to the users of the digital platforms, and the public good that this content provides, should be the key driver in determining appropriate remuneration for news media businesses. Audience safeguards that underpin the quality of the content—such as the SBS Codes of Practice—will be a relevant consideration. However, importantly, the cost of producing news content varies significantly between news media businesses depending on their scale, and should not be taken into account. A calculation or revenue distribution system based on cost of producing news would unduly disadvantage more efficient and low-cost operators.

While this process is being undertaken under competition rather than copyright law, there may be payment mechanisms and regimes in the copyright sphere that could be adapted and transferred—such as the statutory licensing schemes administered by collecting societies. These should be considered to find a process which is administratively efficient.

Individual news media businesses will also need to consider the rights issues associated with remuneration for content, when that content includes vision or other elements from a third party (eg. an international broadcaster or news agency). This may require consideration of a 'flat fee' or 'subscription-style' remuneration system. Appropriate

¹³ Concepts Paper, page 9

¹⁴ Concepts Paper, page 11

remuneration levels and structures for determining remuneration require further discussion and consultation.

The Concepts Paper notes the term 'use', and the varied interactions to which this term may apply.¹⁵ As this process is being undertaken in competition law rather than copyright law, any definition of 'use' should avoid to the greatest extent possible the language of copyright (reproduction, communication, public performance, etc). The development of an inclusive (but not exhaustive) list of 'purposes' to define 'use' may be of assistance in bargaining. For example, 'use' of news content may be for the purpose of:

- news aggregation;
- linking;
- previews of headlines and articles;
- news summaries; and
- photograph thumbnails.

Recommendation: The Code should provide for collective bargaining, with the option for news media businesses to continue to agree individual commercial arrangements with the digital platforms as required.

Sharing of user data

As suggested by the Concepts Paper, '...as digital platforms obtain a benefit from the data they collect due to users' interactions with news content published or distributed on their services, it may be reasonable for digital platforms to share this data with relevant news media businesses'.¹⁶

SBS supports increased transparency of the digital platforms in relation to the sharing of user data they collect which relates to content originated by news media organisations. The ACCC has recently shared a document outlining the range of data which Facebook currently provides to news media businesses—and will assess this in relation to data that may be covered by the Code.

It would be appropriate for the Code to cover negotiation of data formats that are most efficient for news media organisations to process in order to gain insights. This may include:

- ability to customise how data is aggregated across multiple profiles or accounts, based on the requirements of individual organisations;
- ability to disaggregate data based on geography of users to ensure the extent of domestic engagement is understood;
- a framework to agree on consistent metrics and methodologies for the collection, interpretation and delivery of data; and
- access to Application Programming Interfaces (**APIs**) for the automation of data collection into the organisation's data platforms.

¹⁵ Concepts Paper, page 14

¹⁶ Concepts Paper, page 16

Recommendation: The Code should provide for increased transparency of user data collected by digital platforms, which relates to content originated by news media organisations.

Advance notice of algorithm changes

The Concepts Paper notes that 'Requiring Google and Facebook to provide notice of significant algorithm changes to news media businesses may mitigate the potentially substantial impacts such changes may have on news media businesses' operations'.¹⁷

As is standard in other industries, and in order for news media businesses to better understand and adapt to significant changes to ranking and display algorithms, advance notice should be given of these changes. Notice is particularly important where news media businesses build their own digital products to interact with major digital platforms—if they are changed without sufficient notice, it may not be possible to adjust the complementary product suite in a timely manner, which can have detrimental impacts on audiences.

A materiality threshold may need to be established regarding these changes, and the requirement to notify news media businesses. Some exemptions may also need to apply (eg. for urgent algorithm changes being made in the interests of users, or public safety or security).

The notice, ideally received 90 days in advance of the change, may include information such as: timing of change; reason for change; and the opportunity to provide feedback before or after the change. To the greatest extent possible major digital platform providers should be required to provide technical information and support to expedite the adjustment by news media businesses of their products and services.

Advance notice should also be provided on (potential) outages, and support for news media businesses affected by these outages. These outages may include:

- inability to publish on SBS pages for extended periods;
- scheduled posts receive error messages or are not posted; or
- the entire platform is inaccessible for extended periods.

The notice should provide feedback on how these outages impact live ad spend and the Media Support portal should provide clear communication regarding timeframes and reasoning for the outages.

Advance notice, based on a materiality threshold, should also be provided of the launch of new products. This notice should include:

- a description of the new product and how it changes the user experience;
- consequent changes to the publishing experience/workflows; and
- any other changes (eg. interface, content ranking).

The notification should also outline any other messaging or support that will be available for users and publishers.

¹⁷ Concepts Paper, page 19

News media businesses would also benefit from increased visibility of algorithms and guidance on elements considered under the current ranking algorithms.

Recommendation: The Code should require digital platforms to provide advance notice of algorithm changes, launch of new products, and outages, where these may impact the services and processes of news media businesses.

Prioritising original news content

Original news content is at the heart of Australian news media businesses which invest significant time and resources in the creation of content which meets the needs of these audiences. As noted in the Concepts Paper, '[t]he public benefits provided by news and journalism rely on news media businesses producing original news content by employing journalists to undertake research, investigation and analysis of current events'.¹⁸

Independent, non-partisan public broadcasting delivers significant public benefits, particularly in a highly concentrated media landscape. SBS is the only nationally available Australian-based broadcaster providing news and current affairs services in a broad range of languages other than English (**LOTE**), and provides Australians with an unparalleled diversity of international and Australian programming.

Importantly, while migrants to Australia can now readily access homeland news and information via satellite TV and the internet, SBS delivers Australian news and information in-language—such as news on political developments, information about settlement resources, and details about Australian laws, culture and values. There is a clear public interest in ensuring that SBS news and current affairs services are readily available and accessible to the Australian community, by ensuring their prominence on digital platforms.

'Original news content' will require a formal definition in the Code, and may require further consultation among news media businesses given processes for advising digital platforms of the 'original' status of the content will also be required. These processes should take into account challenges in determining the 'original' status of news content where, for example, it includes vision or other elements from third party suppliers.

The Concepts Paper also raises the issue that 'many news media businesses have expressed concern that ranking algorithms used by Google and Facebook do not give appropriate weight to original journalism, and that this can result in "rewriters" quickly outranking, attracting more views, and therefore generating more revenue than original articles'.¹⁹ The prioritisation of 'original' news content is an important issue which requires further consultation, noting that Google has already undertaken measures to improve the prominence of original reporting.²⁰

An analogy can be drawn with defaults on connected televisions (**CTVs**). In parallel to consideration of major digital platforms, emerging business practices in the media market by manufacturers of CTVs should be monitored to ensure equitable access to content providers' apps, including those provided by SBS. Further detail on this issue is set out at **Attachment A**.

¹⁸ Concepts Paper, page 21

¹⁹ Concepts Paper, page 21

²⁰ Concepts Paper, page 22

Recommendation: The Code should provide for the prioritisation of original news media content, particularly where this content is created by public broadcasters.

Control over the display and presentation of news

While the ACCC notes that the display and presentation of news on digital platforms can '...have the effect of diminishing the value of news media businesses' brands and associated content...', the Concepts Paper also notes that '...digital platforms also have a legitimate interest in carefully calibrating the look and feel of content displayed on their services, in order to preserve the usability of these services for consumers'.²¹

News media businesses would benefit from Code mechanisms allowing them to negotiate for a greater degree of control over display and presentation of news content. In particular, when considered in conjunction with the prioritisation of original news content, and remuneration to news media businesses for this content, the display and presentation of original content is a key factor. News media businesses should have the opportunity, and technical capability to highlight original and/or exclusive content; and to facilitate the best image placement and most appealing headlines and pointers.

In balancing these two interests, the Code should, at a minimum, include mechanisms requiring digital platforms to provide news media businesses with advance notice of, and/or consultation on, changes to policies and practices affecting the display and presentation of news.

Recommendation: The Code should provide for news media businesses to have a greater degree of control over display and presentation of news content.

Control over advertising directly associated with news

As noted in the Concepts Paper, digital platforms often directly associate advertising, including display advertising and embedded video advertising, with news. The Concepts Paper also notes concerns raised around digital platforms' treatment of sponsored content.²²

SBS takes great care to ensure that commercial relationships do not undermine its independence and integrity. For example, SBS does not allow sponsorship of its news and current affairs content (with the exception of the finance, sport and weather segments) because of the risk that the sponsorship relationship will compromise its editorial independence and integrity.

There are concerns around the types of products and services that could be placed around SBS's news and current affairs content. SBS would require a level of oversight in relation to advertising deals around its news content to protect its reputation as an independent news service.

SBS welcomes further consultation and discussion on this issue.

Recommendation: The Code should require digital platforms to provide news media businesses with a level of oversight in relation to advertising around news content.

²¹ Concepts Paper, page 24

²² Concepts Paper, page 25

Legal requirements

While not raised in the Concepts Paper, news media businesses are exposed to a number of legal risks related to the publication and removal of content on their platforms as well as on third party platforms on which their content is available. Where this content is made available on third party digital platforms, such as those operated by Facebook and Google, these platforms should commit to the enforcement of content removal for legal reasons. This may include, but is not limited to:

- defamatory content;
- content that may be considered in contempt of court; or
- suppression orders.

This requirement may accommodate undertakings and contractual commitments made by news media businesses.

Recommendation: The Code should require digital platforms to commit to the enforcement of content removal for legal reasons.

Enhanced moderation tools

As an extension of the need to manage legal risk, as outlined above, moderating harmful user generated content (for example, user posted comments, video clips or links) is an increasing challenge for platform users such as SBS. This is particularly notable given the 1 June 2020 decision that media companies are liable for postings made on their Facebook pages by third-party users.²³ The enhanced moderation tools should also be optimised for use in and for LOTE.

Assisting news media businesses to efficiently manage moderation should be a priority for digital platforms and be the subject of Code mechanisms. In particular, the Code framework should incentivise agreement to the introduction of the following enhanced moderation tools to support news media businesses manage risk:

- the ability to turn off the comment section of a particular post on news media businesses' social media pages;
- an 'emergency stop' to temporarily de-activate comments (or switch to pre moderation) in a high volume, high risk scenario;
- the ability to switch to pre-moderation, so page owners can go through a queue of unpublished comments and approve what goes live;
- the ability to set a specified timeframe after publication for users' comments, before closing the comments;
- the ability to moderate fragments of posts; and
- the ability to pause live video comments.

Recommendation: The Code should provide for digital platforms to extend the online moderation tools available for use in English, and in languages other than English.

²³ <https://www.sbs.com.au/news/australian-media-companies-lose-dylan-voller-facebook-defamation-appeal>

Facilitating open communication between digital platforms and Australian news media businesses

The Concepts Paper notes the potential benefits of having an '...open and direct line of communication between digital platforms and Australian news media businesses, including a dedicated point of contact within each of Google and Facebook for news media businesses and vice versa'.²⁴ SBS supports this recommendation, and notes the particular benefits of Australian-based relationship managers. This will ensure that they have a detailed knowledge and understanding of the Code under which the digital platforms, and news media businesses are operating. This contact should be made public and prominent on digital platforms' websites. Similarly, news media businesses should appoint a direct point of contact for digital platforms, with those details clearly published.

As seen in other industries,²⁵ the development of a regular 'information exchange' between digital platforms and news media businesses may contribute to better communication and understanding. This may also be an opportunity for digital platforms to highlight information about, and to take feedback on, upcoming changes to algorithms; outages; and launch of new products, as discussed above. Similarly, the establishment of a website or portal for these updates would contribute to this communication.

Recommendation: The Code should require digital platforms and news media businesses to appoint and publicise a key point of contact for communication, and to establish regular 'information exchanges' in-person or through online tools.

Dispute resolution and enforcement

The Concepts Paper suggests that '...parties to the code could be required to nominate a code compliance manager to address complaints in relation to issues arising under the code in the first instance'.²⁶ The Concepts Paper also notes that '[w]hile some aspects of the bargaining code may be more suitably supported by a dispute resolution process, other aspects may be more appropriately enforced by a third-party "enforcement body"'.²⁷

Enforcement mechanisms to preclude circumvention of the Code requirements should be included in the scheme. While pecuniary penalties may encourage good faith negotiations, these may not provide the timely outcomes that news media businesses require.

Pecuniary penalties could be coupled with other mechanisms, such as a default payment regime, that would apply if the parties were unable to reach agreement within a timeframe stipulated by the Code. The introduction of pecuniary penalties, or a default payment regime, requires further consultation.

Recommendation: The Code should provide for enforcement mechanisms

²⁴ Concepts Paper, page 27

²⁵ For example, the ACMA convenes a Consumer Consultative Forum under section 59 of the *Australian Communications and Media Authority Act 2005*, which includes consumer and industry representation. The ACCC could establish a similar forum to facilitate discussion between major digital platforms and news media organisations.

²⁶ Concepts Paper, page 28

²⁷ Concepts Paper, page 29

Review of the Code

As noted in the Concepts Paper, 'it may be appropriate for the bargaining code to include a mechanism that triggers a review of the code itself, either through a one-off statutory review or a process of regular periodic review'.²⁸

As noted above, both the digital platforms environment, and the news media business landscape, are in a constant state of change, with players moving in and out quickly, and with services changing rapidly. As such, the Code should be reviewed periodically—for example, every three years—with the list of relevant digital platforms and news media businesses reviewed at least annually. Review frequency should be set out in the Code rather than any supporting legislation.

Recommendation: The Code should provide for regular review of provisions and the list of digital platforms and services captured by the Code.

²⁸ Concepts Paper, page 29

Prominence issues associated with connected televisions

The issue is whether failure to agree certain commercial arrangements with the device manufacturers—such as a share of advertising revenue—will affect the prominence of positioning of apps within the user interface of devices. For example, whether failure to agree a revenue-sharing model would mean that a content provider's app is no longer pre-loaded on the 'Home' page menu, or listed as 'recommended'.

In addition to the direct impact on advertising revenue, SBS is concerned about the impact of this conduct on:

- consumers, to whom apps are 'recommended'; and
- competition, as consumer access to certain apps is relegated behind those apps which have a revenue sharing agreement in place.

Apps without a commercial agreement in place may also be given less priority for approval of new app releases and updates. This directly impacts the quality of consumer experience of apps which are increasingly used by the Australian public to view television content; and which, in the case of SBS, have been substantially funded by the tax payer.

Provision should be considered for public broadcasters, who are specifically funded to provide public interest journalism to Australians, to be carried on these platforms without charge.