



**Country Press Australia –  
Application for authorisation AA1000551  
Interim authorisation decision  
29 April 2021**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to grant interim authorisation in respect of the application for authorisation AA1000551, lodged by Country Press Australia (**CPA**) on 22 April 2021.
2. CPA has applied for authorisation, including interim authorisation, on behalf of its current and future members to collectively bargain with each of Facebook and Google concerning payment for content produced by the members and featuring on the platforms.
3. The ACCC has decided to grant interim authorisation to CPA and its current and future members with respect to the proposed conduct described in paragraph 12 of this decision document.
4. Interim authorisation is granted in relation to Division 1 of Part IV and section 45 of the *Competition and Consumer Act 2010* (the **Act**).
5. Interim authorisation commences immediately and remains in place until it is revoked; the date the ACCC's final determination comes into effect; or the date on which the application for authorisation is withdrawn.

**Background**

6. The ACCC released its Digital Platforms Inquiry Final Report in July 2019. The inquiry looked at the impact of digital platforms on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers. One of the 23 recommendations made by the ACCC was that a code of conduct be developed to address the imbalance in bargaining power between leading digital platforms and Australian news businesses.
7. In April 2020, the Government asked the ACCC to develop a mandatory code. On 25 February 2021, the Government enacted legislation for the News Media and Digital Platforms Mandatory Bargaining Code (the **Code**). The Code allows news media businesses to bargain individually or collectively with designated digital platforms over payment for the inclusion of news on their services. Designated platforms can make deals outside of the Code and can also make 'standard offers' available to news media businesses.
8. The Code, including the provision providing an exemption from the Act for registered news businesses to collectively bargain with a designated digital platform, has not yet come into effect as no digital platforms have been designated by the Treasurer.

9. CPA submits that the ability to collectively bargain is recognised and approved if negotiations are conducted under the Code but not if negotiations are conducted outside of the Code. Therefore, CPA seeks authorisation to enable it to negotiate on behalf of its members outside of the Code, should members choose this path.
10. CPA is an industry body that represents the interests of independent regional and local newspapers throughout Australia. CPA currently represents 81 members and 160 regional newspapers.
11. The members of CPA are predominantly small businesses and they provide news services in regional and local communities published in print and online. CPA submits that instances of overlapping products are rare.

### **The application for authorisation**

12. CPA is seeking authorisation on behalf of its current and future members to collectively bargain with each of Facebook and Google concerning payment for content produced by those members and featuring on those platforms, and to make and give effect to agreements arising from the collective negotiations, and to engage in discussions and exchange information regarding those negotiations (the **Proposed Conduct**).
13. CPA submits that under the Proposed Conduct its members will be offered the opportunity to appoint CPA as their bargaining agent in negotiations with Facebook and Google outside the legislated Mandatory Code to secure fair recompense to individual publishers for the content they produce that appears on the digital platforms and the resources required to produce this content.
14. CPA advises it will be voluntary for CPA members to participate in the Proposed Conduct, and there is no proposal to engage in collective boycott conduct.
15. CPA is seeking authorisation for 10 years.

### **The authorisation process**

16. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the likely benefit to the public from the conduct outweighs the likely public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether proposed conduct results in a net public benefit.

### **Interim authorisation**

17. The ACCC may, where it considers it appropriate, grant an interim authorisation which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.<sup>1</sup>
18. CPA has requested urgent interim authorisation to enable it and its members to engage in the Proposed Conduct as soon as possible while the ACCC considers the substantive application for authorisation.
19. CPA submits that granting of interim authorisation would enable its members who choose to bargain collectively to benefit from a larger knowledge base and achieve a greater weight to bargain on a more level playing field with the digital platforms. CPA notes that, absent urgent interim authorisation, individual publishers may be engaging in negotiations without the knowledge to make an informed decision about the comparative fairness of offers they may be presented with.
20. CPA submits that urgent interim authorisation would therefore remove a perceived imperative for its members to negotiate individually.

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<sup>1</sup> Section 91 of the Act.

## **Consultation**

21. The ACCC will conduct a public consultation process on the substantive application for authorisation and details regarding how to make a submission will be available on the ACCC's [authorisations public register](#).

## **Reasons for decision**

22. The ACCC has decided to grant urgent interim authorisation with respect to the Proposed Conduct described at paragraph 12 of this decision document.
23. In granting interim authorisation the ACCC notes:
- The Proposed Conduct is likely to result in public benefits from transaction cost savings resulting from a single negotiation process conducted by CPA with each of Facebook and Google, relative to a situation where multiple individual negotiations occur with each member.
  - The Proposed Conduct is likely to provide a greater ability for CPA members to have input into negotiations with Facebook and Google. CPA members are likely to be at a disadvantage when negotiating with Facebook and Google due to fewer resources, access to information and less negotiating experience. Collective bargaining may enable individual members of the group to become more informed and engaged participants in negotiations and improve their input into contracts. This may lead to terms of supply that are more comprehensive and that better reflect the circumstances of the group and the platforms, resulting in more efficient outcomes. To the extent that the negotiations provide CPA members with certainty around the terms and remuneration of their content appearing on the platforms, this may contribute to the longer-term viability of their newspapers. The value of collective bargaining to regional/small businesses was recognised in the development of the Code.
  - The Proposed Conduct is unlikely to significantly reduce competition between CPA members in supplying content for display on Facebook and Google's platforms.
  - The Proposed Conduct does not enable CPA members to compete less vigorously in the creation and provision of content.
  - Participation in the Proposed Conduct is voluntary for both CPA members and Facebook and Google.

## **Reconsideration of interim authorisation**

24. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation.
25. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.