

Facebook submission to the ACCC's consultation on Country Press Australia application for authorisation

26 May 2021

Facebook welcomes the opportunity to participate in the consultation by the Australian Competition and Consumer Commission (**ACCC**) with respect to the Country Press Association's (**CPA**) application for authorisation to bargain collectively with Facebook and Google. Through this submission, we hope to share more details about the current approach we are taking to investment in the Australian news ecosystem, including with smaller and regional publishers such as those represented by CPA . This should assist the ACCC in ensuring that its consideration of the application by CPA can be undertaken with a complete and accurate factual record.

We have been negotiating with CPA on behalf of its members, even though Facebook is not currently designated under the news media bargaining law (**Code**), and we recently sent CPA an offer for a commercial investment to those of its members who use and benefit from Facebook's services, to be administered by CPA. Consequently, we do not agree with the interim authorisation's view that this authorisation is necessary for negotiations to be conducted outside of the Code.¹ With respect to Facebook, commercial negotiation with CPA is already happening irrespective of the status of the Code, and collective bargaining authorisation is not required for this to occur.

In this regard, we are concerned that the ACCC's standard authorisations process has not been followed, with this urgent interim authorisation being granted without the ACCC conducting any prior consultation with potentially affected parties. The result is that neither the application nor the ACCC's interim authorisation accurately describes our investment approach generally or our engagement with CPA to date . The interim authorisation therefore incorrectly concludes that authorisation is needed to enable negotiations with CPA.

Before turning to these concerns, in an effort to ensure that this application is fully considered within the benefit of an accurate overview of Facebook's role and investment in the news ecosystem in Australia, we share more details about this first.

¹ ACCC interim authorisation:
<https://www.accc.gov.au/system/files/public-registers/documents/Interim%20Authorisation%20-%2029.04.21%20-%20PR%20-%20AA1000551%20CPA.pdf> page 2

Facebook's role in the news ecosystem in Australia

Facebook has demonstrated that we take time and care to design commercial agreements and programs that are tailored to the interests of the people who use our services, are best suited to the nature of our products and services, and also reflect the business models and goals of the different publishers. We recognise that publishers have different audiences and monetisation strategies, and that they are at different stages of transforming their business to respond to the tectonic shifts that the internet has created in both how consumers engage with news and information and also how advertising is priced and delivered.

Before turning to the specific details of our news investments in Australia over the past 18 months, it is helpful to reflect on the way news appears on our services and how we work with publishers more broadly.

Although Facebook is primarily a service used by Australians to connect with their family and friends, to participate in causes that are important to them, and to interact with their community, and reach their business goals, we recognise that our services can play a role in the news ecosystem. This is because publishers choose to share stories on our services to connect with audiences, and because Australian users choose to share news content or react to news content that they read other than on Facebook with their family and friends.

News on Facebook

There are three main ways we work with publishers:

- Firstly, publishers and the public choose to share news content on our services which results in free organic distribution of news. We respect the monetisation preferences of the publisher as part of this organic distribution -- people need to click through to the publisher's website to access that article -- whether it is paywalled or ad supported, this is all controlled by the publisher. Last year Facebook generated approximately 5.1 billion free referrals to Australian publishers worth an estimated AU\$407 million.
- Secondly, in response to feedback from publishers that the value of this organic distribution was not sufficient, we invested in the development of customised

tools and products to help news publishers more effectively monetise their content on our services. These tools drive value to publishers who choose to use them. For example, from January to late November, Australian publishers generated \$5.4 million from our revenue share programs, such as In-Stream Video advertising.

- Thirdly, we have directly invested tens of millions of dollars in content and programs, including commissioning Australian news content to appear in new products such as Facebook Watch or as part of the Facebook Accelerator program, that funded reader revenue (eg. subscription and membership) projects.²

Facebook's investment in the Australian news ecosystem

Since the start of 2021, Facebook has entered into commercial agreements with dozens of news organisations -- including Seven,³ Australian Community Media,⁴ Solstice,⁵ Private Media,⁶ Schwartz,⁷ News Limited⁸ and Sky News⁹ -- for new premium content. These agreements build on a series of investments in Australian newsrooms, both large and small, over the past three years, and our ongoing financial support for the Walkley Foundation and the Alliance for Journalists' freedom for several years. The benefits of these investments are particularly focused on small and medium publishers (especially regional and local publishers). Our Accelerator program brought together 11 regional and smaller publishers with industry experts from around the globe to develop strategies for

² Facebook for Media Blog Post, *Facebook partners with Australian news publishers to fund news shows on Facebook Watch*

<https://www.facebook.com/formedia/blog/facebook-partners-with-australian-news-publishers-to-fund-news-shows-on-facebook-watch>; A Hunter, *Facebook Expands Local News Accelerator To Support Australia & New Zealand Publishers*, blog post published 18 September 2019,

<https://www.facebook.com/journalismproject/facebook-accelerator-program-australia-new-zealand>

³ *Seven West Media and Facebook enter news partnership*, 23 March 2021:

<https://7news.com.au/technology/facebook/seven-west-media-and-facebook-enter-news-partnership--c-2224222>

⁴ *Facebook and Australian media company ACM sign content deal to feed news coverage on social network*, 4 May 2021:

<https://www.canberratimes.com.au/story/7236733/facebook-does-deal-with-acm-for-news-feed/>

⁵ Brittany Rigby, *Facebook signs deals with Private Media, Schwartz Media and Solstice Media*, Mumbrella, 26 February 2021:

<https://mumbrella.com.au/facebook-signs-deals-with-private-media-schwartz-media-and-solstice-media-670915>

⁶ Ibid.

⁷ Ibid.

⁸ *News Corp and Facebook Reach Agreement in Australia*, 15 March 2021:

<https://newscorp.com/2021/03/15/news-corp-and-facebook-reach-agreement-in-australia/>

⁹ Ibid.

encouraging readers to subscribe and donate.¹⁰ As part of that investment, we provided funding of \$100,000 to publishers for reader revenue projects. From the start of COVID-19, digital reader support doubled on a month-over-month basis, on average, among Accelerator publishers through 2020. We have received feedback¹¹ that this support helped position many of the participants to not only survive the coronavirus pandemic, but even grow their businesses during a difficult time.

To further support smaller Australian publishers in 2020, we provided extra unencumbered funds to each of these Accelerator partners as part of our COVID-19 relief program.¹² The combined total customer lifetime value generated by publishers through the Accelerator and COVID-19 relief investments was \$5 million.

In addition to this, Facebook provided funding for 17 rural and regional news organisations in Australia as part of a global \$100 million investment to support the news industry through the pandemic. Newspapers such as the Central Coast Community News, Geelong Independent, Noosa Today, and Naracoorte News all received grants to help contribute to the viability of these newsrooms throughout COVID-19.¹³ A Walkley Foundation judging team selected projects based on organisational need, public interest and impact. Many of the winning submissions included long-term opportunities for increasing the reach and distribution of regional journalism and new ways to grow advertising and subscriber revenue. As the coronavirus had a devastating effect on many of the rural and local commercial enterprises that paid for news by advertising, it was important that Facebook's funds went directly to alleviate those losses and contribute to the sustainability of some of the newsrooms across Australia that needed it most.

¹⁰ A Hunter, *Facebook Expands Local News Accelerator To Support Australia & New Zealand Publishers*, blog post published 18 September 2019,

<https://www.facebook.com/journalismproject/facebook-accelerator-program-australia-new-zealand>.

¹¹ <https://www.facebook.com/journalismproject/accelerator-australia-new-zealand-2020>

¹² A Kapoor and A Hunter, *Australian newsrooms can now apply to the COVID-19 news relief fund*, blog post published 18 May 2020,

<https://www.facebook.com/journalismproject/programs/grants/coronavirus-australian-relief-fund>

¹³ The Walkley Foundation, '17 newsrooms in regional Australia secure financial support from the Facebook for Journalism Project COVID-19 News Relief Fund Program', *Walkley Foundation*, <https://www.walkleys.com/facebook-fund-recipient-announced/>, 15 July 2020.

Current focus of Facebook's news investment in Australia

Building on this multi-year series of commercial deals and programs, Facebook is now focused on two goals -- firstly, bringing Facebook News¹⁴ to Australia, and secondly, developing new programs that can support the needs of smaller, regional and public interest publishers.

With respect to Facebook News, this is a destination within the Facebook app that features news from leading national, local and lifestyle outlets. The product puts original journalism in front of new audiences and provides publishers with more advertising and subscription opportunities to build sustainable businesses for the future.

Key features of Facebook News include:

- Today's stories chosen by a team of journalists to catch up on the latest news as it breaks throughout the day
- Personalisation based on the news you read, share and follow, so you can find new interests and topics from your favourite news outlets or publications you haven't previously followed, creating a fresh and interesting experience every time
- News sections to dive deeper into business, entertainment, health, science & tech and sport
- Controls to make sure you see the articles, topics or publishers you want to see and hide those you don't.

There has been public reporting about some of the commercial deals that we have entered into recently with Australian news publishers (noted above), and we are in advanced negotiations with several other publishers that may also be announced in the coming weeks.

However, we recognise that the Facebook News product may not suit the content strategies and business models of all Australian publishers. This is why we are partnering with leading local news industry stakeholders to manage our investments in smaller, regional and public interest journalism. This is taking shape through two investments.

¹⁴ <https://www.facebook.com/news/learn-more/>

Firstly, we will be making a very significant¹⁵ investment in the form of grants to support smaller regional, rural and diverse newsrooms as they develop new products and strategies to expand reach and revenue. We look forward to formally announcing this program and confirming the details of the industry partner and grant guidelines in the coming weeks.

Secondly, in addition to this commitment, we have also been meeting with CPA, recognising its position as an industry body that represents the interests of independent regional and local newspapers throughout Australia, specifically 81 members and 160 regional newspapers.

We have worked directly with CPA because we recognise the challenges for both Facebook and member publishers of negotiating individually. To ensure that our investment offer is relevant to the CPA membership, we have undertaken a review of the presence of the CPA members on our services and found that many publishers who are members of the CPA do not use our services or, if they do, many do not yet make best practice use of our services. This is why our offer is in the form of either a direct investment for CPA to distribute or an investment and an offer of digital skills training with WAN-INFRA. Our proposal recognises that many CPA members do not use our services and consequently would receive no benefit from the products we make available such as Facebook News. However, we welcome the opportunity to work with the industry to improve their digital capability, with a view to deeper partnerships in future. We look forward to concluding the details of this investment, as works best for CPA and its members, as soon as possible.

CPA's application for authorisation does not reflect Facebook's ongoing engagement

Against this background, It is unclear to Facebook why CPA requires this collective bargaining authorisation.

¹⁵ Miranda Ward, *Facebook Commits \$15M to Regional Australian Newsrooms*, Australian Financial Review 10 MAY 2021: <https://www.afr.com/companies/media-and-marketing/facebook-commits-15m-to-regional-australian-newsrooms-20210509-p57q7c>

Firstly, one of the stated reasons for the urgent authorisation application was so that “[CPA] can commence negotiations with Google and Facebook as soon as possible.”¹⁶ However, Facebook has been engaging with and negotiating in good faith with CPA, as a bargaining agent for its members, since 19 March 2021. This was over a month before CPA lodged its application for authorisation with the ACCC on 21 April 2021. In addition, it is important that any authorisation decision is not based on incorrect information that “recent discussions with the Digital Platforms have indicated they are speaking with individual publishers under an NDA.”¹⁷ Facebook’s approach to date has been to negotiate with CPA on behalf of its members, and not with individual members under individual NDAs.

Facebook notes that its negotiations with CPA are ongoing, and CPA’s authorisation application has no bearing on those commercial discussions which are advanced.

Secondly, as noted above, many of CPA’s members included in the collective bargaining group have an extremely limited presence on Facebook - and in some cases, have no presence at all. In these circumstances, it is not appropriate for authorisation to be sought and granted for all CPA members as it is not even possible for Facebook to negotiate with all CPA members in line with proposed conduct described by CPA being “the content they produce that appears on Digital Platforms”. This is why our offer to CPA relies on CPA’s knowledge and expertise to direct funds suitable for its member publishers, and also a potential digital skills training component.

Procedural concerns

The process that has been adopted in granting urgent interim authorisation to CPA on 29 April 2021 has been unconventional. Facebook would ordinarily have expected the ACCC, in line with its standard processes for assessing and granting interim authorisation, to consult with potentially affected parties as is consistent with the purpose and objectives of the ACCC’s authorisation procedure. Facebook understands that in virtually all authorisation applications over the past few years, the ACCC has undertaken market inquiries prior to granting interim authorisation, with the only exceptions to this being

¹⁶ CPA, Authorisation (Non-Merger) Application, 21 April 2021, <https://www.accc.gov.au/system/files/public-registers/documents/Application%20Received%20-%2022.04.21%20-%20PR%20CPA.pdf>

¹⁷ Ibid.

authorisations addressing COVID-19 related challenges; which this application does not make any reference to. This lack of consultation is particularly surprising given Facebook is one of the two parties that CPA identifies as being directly impacted by the proposed conduct and so would have information - like that noted above - relevant to the ACCC's assessment of CPA's interim authorisation application.

Facebook notes two other points in relation to the ACCC's ongoing consideration of CPA's application for authorisation:

1. Authorisations with a 10 year duration are relatively uncommon, and are typically only granted in relation to conduct involving infrastructure projects and other long term investments. The news media industry is far from that and is a highly dynamic, evolving industry. Indeed, the Government is currently embarking on a wholesale review of laws impacting the media sector. There appears to be no circumstances in CPA's application which provides any compelling case for authorisation to be granted for such a long time.
2. It is important that both Facebook and the ACCC have certainty about the identity of any members of CPA to which any authorisation should apply. Therefore, consistent with both the approach adopted by the ACCC in a range of previous collective bargaining authorisations and the approach under the Code where news media businesses need to be registered in order to avail themselves of the bargaining mechanisms, any authorisation should require CPA to inform Facebook of any new member of the collective bargaining group in advance.