



News Media and Digital Platforms Mandatory Bargaining Code

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Presentation agenda

- The Digital Platforms Inquiry
- Development of the News Media Bargaining Code
- Outline of main elements
- Outcomes and next steps

Background

- The ACCC is an independent statutory authority responsible for enforcing the *Competition and Consumer Act 2010* (Cth) and a range of other legislation.
- To achieve its purpose of making markets work for consumers, the ACCC:
 - maintains and promotes competition, including through reviewing **mergers** and taking **enforcement action** to address concerns
 - protects the interests and safety of consumers
 - undertakes market studies and inquiries, such as the **Digital Platforms Inquiry** and **Digital Platform Services Inquiry 2020-2025**

Digital Platforms Inquiry

PROCESS

The ACCC was directed to undertake an 18 month inquiry into digital platforms in December 2017. The Digital Platforms Inquiry Final Report was released in July 2019.

KEY FINDINGS

The report found the substantial market power of Google in search services, and the substantial market power of Facebook in social media. This had a particularly profound impact on the supply of news and journalistic content.

RECOMMENDATIONS

Made 23 recommendations on competition and consumer issues, including changes to merger law, consumer protection and privacy regulation. Those most relevant to news included:

- **R6: industry code to address bargaining power imbalance b/w digital platforms and news businesses**
- R10: increased funding for regional and small publishers
- R12 & 13: increased digital media literacy
- R14 & 15: codes of conduct to combat disinformation and misinformation.

Key figures

Australian monthly active users (Feb 2019)

Google Search	19.2 million
YouTube	17.6 million
Facebook	17.3 million
Instagram	11.2 million

Source: Digital Platform Services Inquiry First Interim Report

Public interest journalism article production declines (2018)

Local government	26% decline since 2005
Local court	40% decline since 2005
Health issues	30% decline since 2004
Science issues	42% decline since 2006

Source: ACCC analysis of data sourced from the Factiva Global News Database

Typical AU\$100 spent by advertisers on online advertising in 2019

Google	\$53
Facebook	\$28
All other outlets	\$19

Source: Digital Platform Services Inquiry First Interim Report

Newsroom closures (Jan-Dec 2020)

Local government areas without coverage	32
Regional government areas without coverage	16
Permanent closure of mastheads	33
Permanent end of print edition	97

Source: Public Interest Journalism Institute's Newspaper Mapping Project

Process leading to the Code

1) DPI FINDINGS

The ACCC's 2019 Digital Platforms Inquiry found there was a significant bargaining power imbalance between Australian news media businesses and each of Google and Facebook.

2) VOLUNTARY CODE

The Government initially asked the ACCC to work with the industry to implement a voluntary code of conduct to address the bargaining power imbalance.

3) MANDATORY CODE

In April 2020, on ACCC advice that digital platforms were unlikely to reach agreement on a voluntary code, the Government announced that a mandatory code would be developed.

Objectives of the Code



Create incentives for commercial deals between digital platforms and news businesses (either inside or outside the Code)



Provide a framework for good faith negotiations and mediation between the parties and a fair and balanced arbitration process to resolve outstanding disputes over remuneration.



Ensure digital platforms contribute to the sustainability of journalism that is important to Australians

Designation of Digital Platforms

The Australian Treasurer may require a digital platform to participate (that is, designate it) after considering:

- Whether there is a significant **bargaining power imbalance** between the platform and Australian news businesses, and
- Whether the platform has made a **significant contribution to the sustainability of the Australian news industry** via agreements with Australian news businesses.

The Treasurer must first issue a notice of intent to ‘designate’ digital platforms.

After 30 days, a final decision can be made.

The Treasurer may consider reports from the ACCC in making this decision.

Registration of News Business

News businesses may apply to be registered under the Code by the Australian Communications and Media Authority (ACMA).

To be registered, they must satisfy tests relating to:



Key Features of the Code

Bargaining framework

Registered news media businesses can initiate **good-faith bargaining** with designated digital platforms to agree terms for payment for making news content available.

Where bargaining is unsuccessful, **mediation** and finally **arbitration** are available to resolve disputes.

Minimum standards

Designated digital platforms are required to provide advance notice of major **algorithm changes**.

Penalties

Breaches of key provisions attract a max. penalty of 10% of annual Australian revenue.

Other provisions carry lower penalties.

Non-differentiation

Prohibits designated digital platforms from taking retaliatory action against news businesses which exercise their rights under the Code.

Prohibits designated digital platforms from dropping Australian-sourced news but keeping internationally sourced news.

Final Offer Arbitration

Arbitration is available as a last resort to resolve disputes about payment between registered news businesses and designated digital platforms.

PRIOR TO ARBITRATION

- Parties must have bargained for 3 months and then attended mediation for 2 months before they can commence arbitration.

OFFERS

- Both parties submit their final offer for what the digital platform should pay for making news content available on its service.

DECISION

- A panel of arbitrators picks the most reasonable offer, taking into account the benefits and costs to each party and the bargaining power imbalance.

Commercial Negotiations

The Code provides a framework for parties to reach agreement both inside and outside the Code.

Parties may undertake commercial negotiations outside the Code at any time.



They can agree to 'turn off' the key elements of the Code, such as its minimum standards and arbitration processes.

Collective Bargaining

The Code allows registered news businesses to bargain collectively.

This is expected to be particularly useful for smaller news businesses.

Standard Offers

The Code allows designated digital platforms to make 'standard offers'.

These are a way for smaller news businesses to avoid the time and cost of going to arbitration.



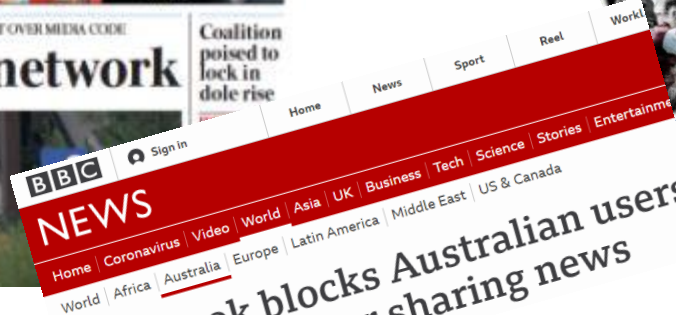
No likes for unsocial network

MILLIONS DENIED ACCESS TO ESSENTIAL INFORMATION IN FACEBOOK'S PROTEST OVER MEDIA CODE



#delete

OUTRAGE AS TECH GIANT BANS NEWS IN AUSTRALIA
IT RISKS BEING TREATED 'LIKE A TOBACCO FIRM' IN UK



Facebook blocks Australian users from viewing or sharing news



FACEBOOK

campaign to ditch social media bully



A part-time theme park

ZUCKERBERG TURNS OFF AUSTRALIA

On the eve of the anniversary of Hannah Clarke's murder, tech bully Facebook cruelly shuts down her foundation ... and DV support agencies, RACQ, and hundreds of other community pages



THUMBS DOWN

The New York Times

LETTER 195

Australia Reacts to a Facebook Without News

Greed, government, the "big technos" and worries about Betoota



The News Media and Digital Platforms Mandatory Bargaining Code ('The Code') is now part of Australia's competition law - the Competition and Consumer Act 2010.

The Code was passed by Parliament on **25 February 2021** and came into effect on **2 March 2021**.



Outcomes and next steps



Both major platforms have struck commercial content agreements with numerous Australian news businesses.

Facebook has announced its agreements so far are worth 'tens of millions' (\$AU) per year. Google's reportedly exceed this amount.



The Australian Government will review the Code legislation in 2022 to ensure it remains fit for purpose.

The Government will continue to consider if and when to designate platforms.