Guardian Australia (GNMA) response to Australian Treasury consultation on the News Media Bargaining Code

Introduction

Launched in May 2013, Guardian Australia (GNMA) is owned by Guardian News and Media Holdings (GNMH) which is owned by Guardian Media Group (GMG), which is the publisher of theguardian.com, a leading global English-language news masthead. GMG's sole shareholder is The Scott Trust, meaning that any profits generated within GMG are reinvested on activities within the Group that support the continued production and distribution of journalism.

We welcome the Treasury's review of the impact of the NMBC on commercial agreements between news publishers and online platforms. The NMBC represents a landmark policy intervention, versions of which are being emulated in Europe[11] and North America[22]. We fully support the policy intent of the intervention, and believe that while the NMBC has not been formally enacted in Australia, the impact has been to bring about positive and meaningful licensing negotiations between platforms and publishers for the first time in many years. At a high level, the NMBC has served to rebalance the relations between unavoidable trading partners and the news publishers that rely on them to distribute journalism to millions of Australians every single day.

During the development of the news media bargaining code (NMBC), GNMA submitted that the NMBC should seek to correct the bargaining power imbalance between publishers and digital platforms through the achievement of a number of outcomes. Those outcomes included that the policy should:

- Not influence or second guess the existing preferences of current news consumers;
- put an emphasis on reach and investment in journalism, which would allow the funding to flow to the news organisations that Australian news consumers value for their production of news;
- not have the effect of preventing the entry of new players or the growth of smaller players;
- avoid tilting the playing field towards a small number of large news publishers;
- enable smaller publishers to come together to negotiate complex licensing agreements with online platforms sources.

While we have sought to cover developments in relation to negotiations conducted as a result of the NMBC, we do not claim to have a full view on whether these outcomes have been achieved. We welcome this process, therefore, as a way to gain a more holistic understanding of the impact of the policy on the ability for news publishers to establish licensing agreements with Google and Facebook - two of the biggest beneficiaries of the investment of time, energy and resources that Australian journalists create producing public interest journalism.

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[1] https://pressgazette.co.uk/uk-government-force-google-meta-pay-for-news/

[2] https://www.canada.ca/en/canadian-heritage/news/2022/04/government-introduces-a-bill-to-ensure-fair-compensation-for-news.html

In this submission, we provide our view on the degree to which these tests have been satisfied, though other stakeholders will be better placed to provide views on some of these matters. We have sought to provide as much information as we are legally able, within the confines of the commercial contracts with the online platforms with whom we have signed licensing agreements.

1. The review seeks information from platforms in particular on the nature and quantum of the benefits, both financial and non-financial, received by news businesses in metropolitan and regional areas from commercial deals with digital platforms.

GNMA has concluded agreements with both Google and Facebook in relation to the use of our journalism on their respective products and services.

For Google, a significant proportion of the fees was for licensing our content for their so-called Google Showcase product. We also negotiated non-exclusive licensing agreements for video and audio content on other Google services, as well as additional funding for other GNMA projects and advertising commitments.

While GNMA is satisfied with the total fees negotiated with Google, GNMA does not receive any payment for the use of our content on Google Search, despite this providing the most engagement and value for Google.

For Facebook, our agreement is to licence content for the Facebook news tab. GNMA has not seen a material increase in audience referral from Facebook since the deal commenced and, as such, we assume it has a much lower audience than Facebook's main news feed. As with Google Showcase, however, GNMA does not receive any licensing payment for Facebook news feed, despite this being the product where GNMA content delivers the most engagement to Facebook.

2. The review requests that news businesses provide as many examples as possible of where funding from commercial deals has been used to, for example:
   - employ more journalists;
   - invest in professional development for journalists and other staff;
   - invest in premises, websites, equipment, software, and data collection and use;
   - expand the reach of news businesses;
   - improve the long-term sustainability of news businesses;
   - avoid having to downsize or close news businesses; or
   - invest in any other way that increases the amount, quality and distribution of core news content.

GNMA executed a longform commercial agreement with Facebook in June 2021, with the Google agreements following in July 2021. The confidentiality provisions of these deals prevent GNMA from disclosing the details of how fees from each respective deal have been used to meet our contractual obligations. We note that the ACCC does have the powers to request the terms of each agreement if it was to participate in this review.

However, we can disclose that GNMA underwent a significant expansion since the agreements were completed. Our newsroom has grown by over 40 journalists, while our commercial and operations team has expanded by over 10 FTEs. Not all of these roles were a direct result of the funding from Google and Facebook, but the financial security of these contracts gave management the confidence to bring forward investments that would otherwise have been made in subsequent years.

These roles are primarily based in Sydney, Melbourne, Canberra and Brisbane. As a result, GNMA has taken an additional floor of office space in its head office in Sydney, is relocating to a larger office in Melbourne and we recently opened our first Brisbane office.

It's too early to gauge the success or otherwise of this investment in our team, but the initial results are encouraging. We believe that an increased volume of journalism from our expanded newsroom, the distribution of this journalism to new channels, together with an expanded commercial team focused on monetising that journalism, will fuel further revenue growth for GNMA, and ultimately facilitate additional investment in more journalism.

The benefit of the licensing agreements struck as a result of the NMBC process is that we can use the monies made available through those agreements as we determine is best for our business. It is a project run according to parameters that we set ourselves, as opposed to some of the grant giving initiatives that tech companies have previously sought to run, which are generally skewed to the priorities of the tech company that runs the scheme.

3. The review seeks stakeholder views on cases where digital platforms and news businesses have not been able to reach commercial deals.

   N/A

4. The review seeks stakeholder views on any other impacts of commercial deals on the Australian news sector (for example, on competition in media markets).
5. The review seeks stakeholder views on the other forms of support made available by digital platforms to individual news businesses and the Australian news sector more broadly.

   N/A

Our primary use of the licensing revenue has been to build out our coverage of public interest stories in underserved areas of Australia. To the extent that this has had an impact on competition in media markets, the effect has, in our opinion, been to correct a market failure rather than to distort the market in a negative way.

We note, however, that many media organisations have qualified as news publishers by meeting the respective content, Australian audiences, revenue and professional standards tests with the Australian Communications and Media Authority. Despite this, many of these organisations have failed to secure commercial agreements with the platforms. Of particular concern is Facebook's well-publicised refusal to engage with SBS and The Conversation to

complete agreements, despite both having significant journalism staff, high audiences and producing a large volume of high quality journalism content.

This is another distorted outcome from the lack of designation of Google and Facebook under the legislation, thereby enabling both platforms to pick winners by choosing which news organisations to complete agreements with in order to reduce the chance of designation. GNMA acknowledges that there is the potential for this outcome to distort relevant markets, disadvantaging those news organisations by closing off a revenue stream that is available to their competitors, which are typically of a larger scale. We are concerned about the long-term consequences of this on the diversity of Australia's media landscape. Again, we don't believe the ability for Google and Facebook to pick winners would have occurred had both platforms been formally designated under the Code.

6. Did the designation criteria operate to deliver outcomes consistent with the policy objectives of the Code?
7. If not, which of the designation criteria could be improved, and how, to ensure consistency with the policy objectives of the Code?
8. Are additional designation criteria needed, or are some criteria unnecessary, to meet the policy objectives of the Code?

We believe that the threat of designation of both Google and Facebook was the correct approach to the first phase of designation under the NMBC, notwithstanding the distortions listed above that have subsequently occurred from the lack of actual designation. We would however, like to see designation extended to other key platforms, especially those with whom we also compete for engagement of attention with Australian news consumers.

As the Treasury consultation paper notes, the NMBC emerged from the ACCC's world-leading digital platforms inquiry[3]. Table 1.3 of that report lists out a selection of platforms used by Australian consumers on a monthly basis.

Table 1.1 Australian usage of selected major digital platforms

Digital platform	Year of launch	Unique monthly audience in Australia (February 2019)
Google Search	1997	19.2 million
Google News	2002	1.5 million
Facebook	2004	17.3 million
YouTube	2005	17.6 million
Instagram	2010	11.2 million
Snapchat	2011	5.5 million
Twitter	2006	7.2 million
Bing	2009	6.0 million
LinkedIn	2003	9.1 million
Apple News	2015	5.5 million

Source: Nielsen Digital Panel, February 2019, All demographics, PC, Smartphone and Tablet, Unique Audience.

While Google and Facebook were the largest online platforms in that list at the time that the NMBC was passed into law, we believe that the NMBC criteria should apply to all of those businesses in table 1.3.

[3] https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf

The ACCC report notes, in particular, that the "rapid increase in consumers' use of Apple News in Australia may result in Apple becoming a 'must have' platform for Australian media businesses. Some media businesses have had difficulties in monetising content on Apple News and in combining their business models with the use of Apple's app store."[4]

There does not appear to be a standing forum in which assessment of platforms that should be subject to the NMBC assesses those platforms on a rolling basis. Nor, arguably, are the criteria for designation clear on thresholds that a platform would need to pass in order to qualify for designation. We believe any updated code would benefit from clearer guidance and criteria on how other online platforms would be designated. Again, we note in response to question 6, the rapid growth of Apple News, which is a direct competitor to news apps, and which is part of a much wider pattern of control that Apple is able to exert over developers operating within the iOS environment.

9. Did the registration tests operate to ensure that news businesses were registered where, and only where, this was consistent with the policy objectives of the Code?
10. If not, which of the registration tests could be improved, and how, to ensure consistency with the policy objectives of the Code?
11. Are additional registration criteria needed, or are some registration criteria unnecessary, to meet the policy objectives of the Code?

We are concerned by the nature of some businesses that have registered with ACMA, with many mastheads focusing on content other than news or not having an appropriate complaints mechanism. It is difficult to see how some of the businesses, therefore, passed the Content Test or Professional Standards Test.

These registrations do not demonstrate the registration tests being inadequate; rather, they appear to result from inadequate assessment of the adherence of the respective tests.

12. Did the ACMA guidelines help applicants understand the registration criteria and the process the ACMA would follow to make a decision on individual applications?
13. Are there any improvements that could be made to the ACMA's guidelines?
14. Are there any improvements that could be made to how the ACMA administers the application and assessment process generally?

GNMA completed agreements with Google and Facebook prior to the ACMA guidelines being available. As such GNMA has not needed to go through the registration process and is not in a position to comment.

15. Are there any issues relating to the Code, not covered by the consultation questions above, that stakeholders wish to bring to the attention of the review?

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[4] Ibid, page 206

We would be happy to discuss any of the issues raised in this short response with Treasury officials.

GNMA
9th May 2022