

MANOFMANY

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Secretariat

News Media and Digital Platforms Mandatory Bargaining Code Review

Market Conduct Division

The Treasury

Langton Crescent

PARKES ACT 2600

RE: Review of the News Media and Digital Platforms Mandatory Bargaining Code

12 April 2022

Dear Secretariat

I am writing to you to provide feedback surrounding the News Media and Digital Platforms Mandatory Bargaining Code and the ramifications it has had for the majority of smaller independent publishers to the detriment of media diversity within Australia.

Man of Many initially expressed concerns to the Senate Committee that the proposed Code would further entrench the larger traditional media companies and destroy an efficient and competitive media market in the process, as well as limit new entrants.

For background, Man of Many is one of Australia's largest men's lifestyle sites, Brand of the Year in the 2021 Mumbrella Publish Awards, and a proudly independent online destination for the latest breaking news, features, and insight from industry experts. We are also one of the fastest-growing digital publications in the country, as recognised in the AFR Fast 100 List in 2021 and Consumer Publication of the Year and Newsletter of the Year in the 2021 Mumbrella Publish Awards. Over 650,000 Australians visit manofmany.com each month and we have over 450,000 social followers.

One year on, while we acknowledge that the Code is seeking to deal with a complex issue, it is apparent that the large traditional news publishers have derived an unfair competitive advantage over smaller independent publishers such as ourselves. Facebook and Google have signed deals with a number of major publishers – in fact, an estimated \$200 million has been negotiated across about 20 deals.

Additionally, the proposed requirement in the Code that news publishers be informed in advance of any algorithm changes by the platforms would also provide these news publishers with a further competitive advantage over smaller independent publishers, given we would not



have access to such information and hence would be unable to compete on a level playing field.

Further specific feedback has been provided below in reference to the Consultation Questions.

1) Application for registration

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?

The ACMA finalised an assessment of Man of Many under Division 3 of the Code in March 2022 in which we were unsuccessful in registering as an eligible news business. Based on feedback provided by ACMA, we have resubmitted a further application to ACMA in April 2022 and are awaiting the result.

The large majority of the ACMA guidelines were very clear with the exception of definitions surrounding "public significance".

As specified in the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021*, and the *News Media Bargaining Code Guidelines*, core news extends beyond what is defined by the ACCC as public interest journalism^[3]. In the legislation, core news is specifically extended to include "current issues or events of public significance at a local, regional or national level other matters of public significance."

Analysing whether Man of Many's news content primarily deals with current issues or events of public significance is therefore central to whether Man of Many's primary purpose is to create content that is core news.

As explained in the Explanatory Memorandum accompanying the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill, core news is intended to be construed broadly, namely:

[core news] includes coverage of current issues or events where these are of public significance at a local, regional or national level. Reporting on community issues or events is considered core news content if they are of public significance. Matters that are principally private or special interest are not intended to be included.

Unfortunately, neither the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021 nor the ACMA, define or provide specific guidance on

what comprises *public significance* in the context of news stories on current issues or events and the Act. Nor is there any legal definition of public significance.

The ACMA in *Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014*, however, does provide guidance on news material that is of public significance for a local or regional area and this helps inform what news is therefore of public significance. The reference to the Broadcasting Services also remains relevant because, as confirmed by the ACMA, there is no formal definition of ‘public significance’ in the code, legislation, nor in the News Media Bargaining Code Eligibility Guidelines. The Broadcasting Services code remains relevant here because it provides broader context around what topics are considered of “public significance” in the public sphere whereby the News Media Bargaining Code provides no formal definition. Specifically, the *Regional Commercial Radio – Material of Local Significance* guidance includes the following issues or events, amongst others, as of public significance for local and regional area news:

- social issues;
- health issues;
- events, including an event that has not yet occurred;
- persons or organisations in the local area and their views; and
- cultural interests, or issues relating to culture.

Beyond this, whether news is of public significance clearly depends on the circumstances relating to the news, including whether it deals with matters that are capable of: affecting the targeted public in a way that legitimately influences their decision making; interests them; or is important to them. And in assessing the public significance of our news content, guidance can be drawn from the general meaning of *significance*. That is, something is of significance if it has the quality of being worthy of attention, or of importance, to a person or group.

ACMA, provides some partial guidance on assessing the ‘*public significance*’ of core news and topics in the revised explanatory memorandum to the News Media and Digital Platforms Mandatory Bargaining Code (the code), and in the News Media Bargaining Code Eligibility Guidelines. This ‘guidance’, however, simply states that core news content ‘*can also include other matters of public significance, such as reporting on law and order, health, education, environmental issues, science, industrial relations and business.*’

However, by using the phrase ‘*such as*’, this partial guidance specifically acknowledges that there are other matters or issues of public significance that extend beyond these examples, and we submit, as demonstrated below, include technology, culture, and consumer product news.

Clearer definitions surrounding “public significance” would be helpful under the code to avoid any subjectivity or ambiguity in ACMA’s assessment.

2) Commercial agreements outside the Code

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

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.

To date, and despite our broad industry recognition and awards, Man of Many is yet to strike any commercial arrangements with either of the major digital platforms despite repeated attempts via email, phone and meetings.

Man of Many was accepted into Google News in March 2022 and its news content is distributed on Google Discover and Google News platforms. Since this time, we have been in discussions with Google Surrounding funding for the creation of Google Web Stories but this is not material in nature for our business.

In 2021, Man of Many was strongly encouraged by Facebook to apply for the Facebook Australian News Fund. Despite the considerable time, investment and effort made as part of our application, Man of Many was unsuccessful in its application for funding, resulting in wasted team resources, budget and time. In March 2022, Man of Many was accepted as a registered news Page by Facebook however does not display or surface on the Facebook News Tab despite repeated requests to address this.

The reason it is so important that small and independent publishers are able to strike commercial deals with the digital platforms is that without them we are at a significant disadvantage to the larger corporate competitors. The large players, whom we compete with every day, now have an additional stream of significant revenue that smaller independent publishers do not have access to – and many despite also being recognised as eligible news businesses by ACMA and the government. It also means Man of Many are being outspent on talent, marketing, technology and anything else needed to run a top tier competitive digital publication.

There is also no requirement in the code to report on if the funding under any commercial deals has been used to:

- 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;

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- 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.

Consequently, as a small independent and innovative publisher, our concern is that the Code, as it stands, has simply further entrenched the market power of Australia's large media organizations. In doing so, the Code goes against its own goals of creating greater equality in the Australian media landscape, promoting a more open and competitive media market, and supporting a diversity of voices and opinion in Australia.

Without access to these commercial deals the independent and small publishing sector is at a material disadvantage.

I'd be happy to further discuss in detail and expand on the issue above over the phone or in person.

Kind Regards,



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