

# URBAN : LIST

Secretariat  
News Media and Digital Platforms Mandatory Bargaining Code Review  
Market Conduct Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**BY EMAIL** [NMDPbargainingcodereview@treasury.gov.au](mailto:NMDPbargainingcodereview@treasury.gov.au)

13 May 2022

## **SUBMISSION IN RESPONSE TO THE REVIEW OF THE NEWS MEDIA AND DIGITAL PLATFORMS BARGAINING CODE**

Dear Secretariat

Thank you for allowing an extension to 13 May 2022 for Urban List Pty Ltd as trustee for the Urban List Trust (**Urban List** or **us / we**) to respond to The Treasury's Review of the News Media and Digital Platforms Mandatory Bargaining Code (**Code**) (**Consultation Paper**).

The review is being undertaken in accordance with section 52ZZS of the Competition and Consumer Act 2010, which requires a broad review of the operation of the Code to be undertaken within 12 months of its initial commencement.

Urban List cheered the introduction of the Code and its underlying policy objective; namely, to address bargaining power imbalances to ensure that digital platforms fairly remunerate news businesses for news content, thereby helping to sustain public interest journalism in Australia.

We have been registered by the Australian Communications and Media Authority (**ACMA**) as a registered news business corporation as defined in the Code, and we have actively, in good faith, tried to engage with Google and Meta to negotiate commercial deals.

Sadly, we wish to share our failed experience with Google and Meta.

Whilst we acknowledge that some progress appears to have been made — digital platforms Google and Meta have reached commercial agreements outside the Code with *some* news businesses — we say that the Code has still not sufficiently achieved results consistent with its policy objective to sustain public interest journalism in Australia.

## Overview

In our respectful opinion, Google and Meta **have not** made a significant contribution to the sustainability of the Australian news industry by agreeing commercial deals with only approximately 21 Australian news businesses.

To the contrary, the Code has inadvertently exacerbated the problem it was designed to solve:

1. The unintended outcome has been to strengthen the balance sheets of only some news businesses and leave many, awarded, public interest news businesses at a significant competitive disadvantage to their direct competitors.
2. At the same time, the bargaining power imbalance remains as strong as ever; even with, we suspect, some of the news businesses *who have* successfully negotiated commercial deals with digital platforms. Google and Meta have adopted a take it or leave it attitude to discussions with news businesses; in our case, Urban List wasn't even made an offer.

Urban List has had the benefit of reading the submission to the Treasury made by Broadsheet Media Pty Ltd in response to the Consultation Paper. Our own experiences are very similar, and we have described those (failed) discussions with Google and Meta below.

Similarly to Broadsheet Media, Urban List now finds itself at a substantial disadvantage compared to certain of its fortunate (and likely quite deserving!) direct competitors by not having access to a comparable revenue source from Google and Meta. We are certainly feeling the effects of this imbalance, and we believe these anticompetitive impacts will continue to increase over time.

The disparity in engagement by powerful digital platforms with Australian news businesses must be addressed in order for Urban List, and other publishers in a similar position, to be able to continue to compete on a sustainable basis.

For clarity, we are not seeking to revisit the policy objectives of the Code which we enthusiastically support. However, in responding to the Consultation Paper, we think it important to identify potential improvements to the. Suggested reform improvements to the Code have been more fully explained by Broadsheet Media in its submission to the Treasury. Urban List fully endorses those reforms.

Without these improvements our view is that the Code misses a great opportunity to make the type of long-term reform that the Treasury set out to achieve.

Effective reform is absolutely necessary to address the issues created by the dominant digital platforms in relation to the production of public interest journalism which were comprehensively identified in the ACCC's 2019 Digital Platforms Inquiry Final Report released.

## **About Urban List**

Urban List was founded in 2011 and has grown to become one of Australia's most influential voices in digital media, connecting with 2.6 million\* people across 13 markets each month. The business is 100% privately owned and we are proud of our independence — lending a fresh perspective to the increasingly consolidated (and competitive) Australian media landscape.

We employ 40 people, including 16 full time journalists, editors, photographers and videographers; regularly engaging a further 65 freelance writers, photographers and videographers in our mission to share the news of our cities and connect communities.

In 2021, Urban List was awarded Australian Media Brand Of The Year\*\*. It felt particularly relevant for an independent media company to be awarded the honour amid the debate surrounding the News Media Bargaining Code, and the jurors' commentary celebrated our contribution to the media industry, the quality of content we create, and the positive influence our brand of journalism has had on national culture and conversation.

*"Resembling the classic company success story, Urban List has come a long way from being launched in its founder's bedroom to reaching an audience of 3 million today. Urban List's winning entry is responsible, innovative and bold."*

*"In one of the toughest times for one of the toughest sectors, Urban List is demonstrating that it is thinking its way to the other side. A really strongly articulated synthesis of publishing strategy and marketing plan."*

*"A good reason for a deserving publisher to get a break. Urban List is one of the quiet achievers of the Australian publishing market."*

Commercially, Urban List generates revenue from a broad spectrum of advertising clients — both direct and through their representative media agencies; alongside a growing eCommerce and affiliate business.

We regularly find ourselves pitching for market share against the largest media organisations in the Australia — publishers that have been successful in securing funding from Meta and Google — and have found the market becoming increasingly competitive as these corporations have become even better resourced.

\* Unique Visitors — Google Analytics, April 2022

\*\* Mumbrella Awards 2021

## **Negotiations with Google**

At Urban List's instigation, Google did engage in discussions with Urban List from early March 2021. However, to say these were "good faith negotiations" would be generous to Google; Google's leadership redirected conversations across various teams and departments over the course of 12 months. It is our opinion that Google is not engaging with us in good faith and has never had any intent to enter into a commercial deal with Urban List. Principally, we think this is

because Google no longer believes there is a meaningful prospect that it, or any of its services, will be designated under the Code.

The most recent correspondence Urban List has had with Google was in April 2022, where Google proposed paying Urban List for the creation of new content to support the release of their Google Stories product. The offer proposed was inconsistent with the intention of the Code, which was that the platforms should pay for existing news content that they use, not require the production of new content. To date, Urban List has chosen not to accept the offer proposed as the cost to create the new content would outweigh the value of the agreement proposed.

Urban List has no commercial leverage outside of the Code to require Google to engage in negotiations to reach a reasonable agreement.

### **Negotiations with Meta**

Meta has refused to engage in discussions for a commercial agreement of any kind with Urban List. We had initial discussions with Meta in February 2021, including a number of email exchanges over the months that followed.

In August 2021, Urban List was one of a select number of publishers whose content began to be included on the newly launched Facebook News function of Meta — acknowledgement that they did view our content as news media, and of value to their audience. The majority of other publishers included on the Facebook News tab were those who had received financial support from Meta in exchange for use of their content.

On August 12, we reached out to Facebook to again seek to open discussions regarding reaching an agreement for use of our content, particularly in the context of the Facebook News function. On 27 August 2021, Meta sent a letter to us advising that Meta had “concluded the content licencing deals”, advising there was no intention of negotiating any further with Urban List or any other media business that it had not entered into an agreement with.

Urban List has been unable to have any discussions with Meta at all in relation to a commercial agreement since receipt of that letter, despite multiple attempts to engage with Meta. In our respectful view, it is clear to Urban List that Meta believes neither it, nor any of its services, will be designated under the Code.

Urban List has no commercial leverage outside of the Code to require Meta to engage in negotiations to reach a reasonable agreement.

### **Specific responses to the “Consultation Questions”**

1. Urban List is not a platform, nor has it successfully agreed a commercial deal with a platform, so it cannot contribute any factual information to the Treasury on the nature and quantum of any benefits arising from commercial deals with digital platforms.
2. The following are our views on some of the unintended consequences of the Code, whereby news businesses who have been unsuccessful in negotiating deals are

competitively disadvantaged to news businesses who have successfully negotiated deals:

- Urban List is facing increasing pressure to both retain and acquire talent critical in the production of quality journalism and ongoing growth of a digital media platform. Organisations who have benefited from the increased resource made available through agreements with Meta and Google are actively recruiting and approaching our existing staff, offering compensation packages up to 30% higher than previous market rates. As an independent, privately owned publisher we are not able to compete with these salaries and are therefore at a disadvantage with regard to our ability to recruit and retain top talent.
  - News businesses who have previously not been competitive in Urban List's category are now using funding to launch new verticals and mastheads established in direct competition to Urban List — based on our knowledge and experience in the sector, our view is that these platform launches would not have been possible or viable without Google and Meta-enabled funding
  - Urban List is seeing an increase in trade marketing and entertaining from funded competitor publishers seeking to target our advertising clients which was not previously apparent — we have anecdotal feedback from our clients that our competitors are spending their Facebook and Meta-granted resources to capture our commercial market share.
  - Urban List is being outspent on technology and innovation which is critical for the future of our sector and our business.
3. See our comments generally in this submission regarding our concerns for news businesses, even those that have successfully been registered by ACMA, that have not been able to negotiate commercial deals with digital platforms causing substantial anticompetitive effects in a hugely competitive sector.

We also unreservedly agree with the more detailed concerns raised by Broadsheet Media in its submission to the Treasury.

4. Our views on the (anti) competitive effects of commercial deals being in place with a limited number of eligible news businesses are generally set out in the introductory remarks to this submission.

We also unreservedly agree with the more detailed concerns raised by Broadsheet Media in its submission to the Treasury.

5. Our personal experience arising from other forms of support made available by digital platforms to individual news businesses are set out above where we detail our experience with negotiating with Google and Meta.
6. For the reasons outlined in our introductory remarks, our own personal experience is that the second designation criteria has not presently resulted in Google and Meta (for example) being fully or appropriately incentivised to negotiate in good faith with *all* eligible news businesses. They have negotiated in good faith with a small number only. Negotiating properly, with some but not all eligible news businesses does not help to

sustain broad public interest journalism in Australia.

We also unreservedly agree with the more detailed concerns raised by Broadsheet Media in its submission to the Treasury.


7. It is our strong view that reform is necessary to the Code to properly incentivise powerful digital platforms to negotiate in good faith with *all* eligible news businesses. It is critical for the sustainability of a breadth of quality Australian new businesses that platforms are better incentivised to negotiate properly and in good faith with all but not some only eligible news businesses.

We also unreservedly agree with the more detailed explanation on necessary reforms to the Code and the reasons given for those reforms as made by Broadsheet Media in its submission to the Treasury.

8. We refer to our response in 7 above and to the more detailed submission made by Broadsheet Media as to required reforms to the designation criteria in order to better meet the policy objectives of the Code.

Thank you very much for considering this submission.

Yours sincerely,

  
**Susannah George**  
Founder and CEO  
Urban List Pty Ltd

13 May 2022