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FOI 3468 Document 1



Australian Government
The Treasury



Ministerial Submission

MS22-002815

FOR ACTION – News Media Bargaining Code Review – Government response and publication of submissions

TO: Assistant Treasurer and Minister for Financial Services – The Hon Stephen Jones MP

TIMING

By Friday, 3 February 2023.

Recommendation

s 47C



Signature	Date: / /2023
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KEY POINTS

- The media release accompanying the release of the NMBC review report on 2 December 2022 stated that a Government response would be issued ‘in due course’.
- The report’s key recommendations are that the Government consider:
 - directing the Australian Competition and Consumer Commission (ACCC) to prepare periodic reports identifying which digital platforms fall within the scope of the NMBC (recommendation 1), and
 - reviewing the NMBC again after four years of operation (recommendation 5).
- The review’s recommendations are set out in full in [Attachment A](#).

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Submissions to the review – proposed release

- Consistent with Treasury practice, the review’s consultation paper (released in April 2022) stated that submissions to the review may be made public on the Treasury website, subject to confidentiality claims.
 - A small number of submissions included confidentiality claims over parts of their content. s 47C
 - We propose to release the submissions in late January or early February 2023, with the precise date to be determined in consultation with your Office.

Media response to release of report

- While the major print media outlets reported the key findings of the review in the days after its release, coverage was short-lived and relatively neutral.
- An article in the Sydney Morning Herald on 5 December reported that the Minister for Communications, the Hon Michelle Rowland, had said in an interview that the NMBC ‘has had benefits in a certain number of areas... but in other areas, it’s still lacking’. The article also suggested ‘media executives’ were surprised the review did not recommend changes to the Code or comment on Meta’s refusal to strike deals with SBS and others.

Clearance Officer

s 22

Acting Assistant Secretary
Competition and Consumer Policy Branch
Market Conduct Division

Contact Officer

s 22

Acting Assistant Secretary, Competition and
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CONSULTATION

Law Division; Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Australian Competition and Consumer Commission

ATTACHMENTS

A: Additional Information

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ATTACHMENT A – ADDITIONAL INFORMATION

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NMBC review recommendations

- The review made 5 recommendations:
 1. The Government should consider directing the ACCC to prepare reports on:
 - the extent to which digital platforms make available covered news content of Australian news businesses and
 - whether significant bargaining power imbalances exist between these digital platforms and Australian news businesses.
 2. The Government should consider addressing, in its response to Interim Report No. 5 of the ACCC's Digital Platform Services Inquiry, whether ACCC information-gathering powers could be used to obtain information about commercial agreements between digital platforms and news businesses.
 3. Treasury, in consultation with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, should monitor registration outcomes for consistency with the policy objectives of the Code.
 4. The Australian Communications and Media Authority should consider administrative issues arising in relation to the registration process.
 5. The Government should consider reviewing the Code again after 4 years of its operation.

Review of the Code

- Treasury undertook a statutory review of the Code in 2022, with the final report published on 2 December 2022.
- The review focused on commercial deals reached between news businesses and digital platforms outside the Code, and the Code's provisions for designation of digital platforms and registration of news businesses.
- The review found the Code has been a success to date, and made five recommendations to improve its operation.

Recommendations

1. The Government should consider directing the ACCC to prepare periodic reports on:
 - The extent to which digital platforms make available covered news content of Australian news businesses; and
 - Whether significant bargaining power imbalances exist between these digital platforms and Australian news businesses.
2. The Government should, in its response to the ACCC's 5th interim DPSI report, address whether ACCC information gathering powers could be used to obtain information about commercial agreements between digital platforms and news businesses.
3. Treasury, in consultation with the DITRDCA, should monitor registration outcomes for consistency with the policy objectives of the Code.
4. The ACMA should consider administrative issues arising in relation to the registration process.
5. The Government should consider reviewing the Code again after four years of its operation.

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International Developments

- Several jurisdictions have progressed, or are considering, similar reforms to ensure digital platforms fairly remunerate news businesses.
- The UK's Digital Markets, Competition and Consumer Bill, if passed, could allow the Digital Markets Unit to develop codes with similar objectives to the Code.
- In Canada, a law with similar objectives to the NMBC received Royal Assent on 22 June 2023. In response, Meta has pulled news from its platforms in Canada, and Google has threatened to do the same. Regulations are still to be made containing operational details, including criteria for designating digital platforms.

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Review of the News Media and Digital Platforms Mandatory Bargaining Code

KEY MESSAGE

- The Government is considering the outcomes of the Treasury statutory review of the News Media and Digital Platforms Mandatory Bargaining Code.

KEY FACTS AND FIGURES

- The Code came into effect on 3 March 2021.
- To date, no digital platform has been designated under the Code.
- Since March 2021, Google and Meta have reached commercial agreements outside the Code with a combined total of over 30 large and small news businesses serving metropolitan and regional areas.
- Some significant news businesses – particularly SBS and the Conversation – have only reached deals with Google, not Meta, and many smaller news businesses have not reached deals with either platform.
- Treasury commenced a statutory review of the Code in March 2022. Its report was published on the Treasury website on 2 December 2022. The press release issued at the time stated that a Government response would be released ‘in due course’.
- Key recommendations in the report are that the Government consider directing the ACCC to prepare periodic reports identifying which digital platforms fall within the scope of the Code, and reviewing the Code again after four years of operation.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	Adviser	s 22
Contact Officer	s 22	Contact Number	s 22
Division responsible	Market Conduct and Digital Division		
Date of Update	24 August 2023		

Review of the News Media and Digital Platforms Mandatory Bargaining Code

BACKGROUND

- The Code aims to address bargaining power imbalances between digital platforms and news businesses to ensure that news businesses are fairly remunerated for their content to sustain public interest journalism in Australia.
- The Code provides incentives for digital platforms and news businesses to reach commercial deals outside the Code. If that is not possible, it provides a framework for good faith negotiations and mediation. Where agreement cannot be reached, it sets out an arbitration process to determine remuneration.
- The Assistant Treasurer may designate a digital platform – making them subject to the Code – 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 news.
- News businesses may register with the Australian Communications and Media Authority (ACMA) if they satisfy tests relating to revenue, type of news content, having an Australian audience, and professional and editorial standards. Registration enables news businesses to participate in Code processes. ACMA has registered over 30 news businesses under the Code to date.

Review of the Code

- The Code legislation required a review of its operation within 12 months.
- Treasury undertook the review in consultation with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, the Australian Competition and Consumer Commission and ACMA.
- The review focused on: deals between news businesses and digital platforms; and the Code's provisions for designating digital platforms and registering news businesses.
- On 27 February 2023, 28 non-confidential submissions to the review were published on the Treasury website. Treasury also received 7 confidential submissions.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	Adviser	s 22 [REDACTED]
Contact Officer	s 22 [REDACTED]	Contact Number	(s 22 [REDACTED])
Division responsible	Market Conduct and Digital Division		
Date of Update	24 August 2023		



Meeting Brief
MB23-000208

FOR INFORMATION - Meeting with Michael Miller, Executive Chairman, News Corp Australia, on 27 April

TO: Assistant Treasurer and Minister for Financial Services – The Hon Stephen Jones MP

PURPOSE OF MEETING

- We understand that Mr Miller wishes to discuss media policy matters, s 22 [redacted]

s 22 [redacted]

- On 2 April, Mr Miller wrote an opinion piece in The Australian (Attachment B) suggesting the suppliers of AI engines should pay content creators, including media companies, in the same way that digital platforms pay for content under the News Media Bargaining Code (NMBC).

KEY MESSAGES

- The Government will release its response to Treasury’s review of the NMBC in due course.

BACKGROUND

s 22 [redacted]

Treasury review of the News Media Bargaining Code

- The Treasury review (released on 1 December 2022) found that the Code has been a success to date. Its recommendations included that the Government consider:
 - requesting future reports from the ACCC on the digital platforms to which the Code should apply; and

- commissioning another review of the NMBC after four years of its operation.
- News Corp made a short submission to the review (which was recently publicly released) stating that it had reached deals with both Google and Meta.

International developments

The United Kingdom

- The United Kingdom Government introduced the Digital Markets, Competition and Consumers (DMCC) Bill on 25 April 2023, which contains a new regime for regulating digital platforms. In 2022, the UK Government expressed support for the UK regulator, the Competition and Markets Authority, using powers it would gain under the new regime to force digital platforms to compensate news businesses.

Canada

- In November 2021, the Canadian Government introduced a Bill similar to the NMBC Code to require online platforms to remunerate news businesses for news content. The Bill passed the House in December 2022 and is currently being considered by a Canadian Senate committee.

Clearance Officer

s 22

Director

Competition and Markets Unit, Competition and Consumer
Branch

26 April 2023

Contact Officer

s 22

Analyst

s 22

CONSULTATION

ATTACHMENTS

A: Attendees

ATTACHMENT A: ATTENDEES

Michael Miller, Executive Chairmen, News Corp Australasia



Brief work history:

Michael Miller was appointed Executive Chairman Australasia of News Corp Australia in November 2015.

He has over 15 years' experience working in senior executive roles in the media industry, most recently as the CEO of APN News and Media.

Michael has sat on the Boards of News Limited, Fox Sports Australia, carsguide.com.au, Sky Network Television Limited, the Committee for Sydney and Waratahs Rugby.

He is currently the Chairman of The Newspaper Works and a Director of Unruly, REA, Foxtel and FOX SPORTS.