

# An Opportunity Too Important to Miss

23 November, 2020

## Joint statement on News Media Bargaining Code

Australians need a strong and vibrant news media sector now, more than ever. Through bushfires, floods and the COVID-19 pandemic, Australians have turned to local news organisations across radio, TV and print as their trusted source of information.

Australians also know that trusted local news sources are under threat. Many have closed, forever silencing local voices.

The global digital platforms should care about the local media landscape. They should care about ensuring the sustainability of the local news media sector.

Why? Because they benefit from it – enormously. But the financial ledger in producing the content is currently very one-sided.

### ACCC finds Google and Facebook should pay

The ACCC spent two years investigating the impact of Google and Facebook on the sustainability of the news media sector. It forensically examined their relationship with news media businesses and their impact on the advertising market.

The ACCC's ground-breaking Digital Platforms Inquiry concluded that the decline over time in public interest journalism outlets in Australia resulted from a drop in traditional media advertising revenues. But as local news media businesses revenues were reducing, the advertising revenues of both Google and Facebook were increasing exponentially.

Australians can search for news on Google and share stories with their family and friends on Facebook and Instagram partly because of investment by local news media businesses in quality journalism. Google and Facebook generate significant revenues by collecting data on those users and turning it around in highly targeted advertising.

This makes news content hugely valuable for the digital platforms. Yet Google and Facebook do not currently pay Australian media companies for this valuable content.

Australian media companies can't avoid using the digital platforms to reach news consumers. Conversely, no single individual media business is critical to the platforms. The result is a significant imbalance in bargaining power.

That's why we need a News Media Bargaining Code. To survive, local news media businesses must be able to negotiate a fair contribution to the cost of creating content that directly contributes to significant local profits made by Google and Facebook.

### A fair and reasonable News Media Bargaining Code

The final Code must include:

- **Final offer arbitration** – this clear and straightforward arbitration model limits incentives on each party to make ambit claims. This is a far more appropriate model than the more traditional slow and expensive arbitration approaches.
- **Strong protection against discrimination** – in other jurisdictions Google has used its bargaining power to avoid making a fair contribution towards the cost of content creation. Facebook has threatened to do the same in Australia. The Code must include protections against these unreasonable tactics.
- **Cover all services** – The Code must apply to the full suite of products offered by Google and Facebook, including Google Search and its variants, Facebook News feed, and Instagram.
- **Information exchange** – The digital platforms must be required to exchange all relevant information with news media businesses that is required for a fair and balanced commercial negotiation.

### Dispelling the myths about the Code

Internationally, digital platforms have been slow to agree to the proposition that they should pay a fair value for the news media content they use.

It is a fact that the Code will not require the platforms to provide any additional user data to news media companies. The Code will not stop them from making changes to their algorithms, or require special treatment for news media businesses.

We agree that the Code must be fair to all parties and take into account relevant costs and benefits, including any potential “undue burden” on the platforms’ commercial interests.

### Legislating a Code quickly

It is great news for Australians that the Morrison Government has committed to act on this legislation before the end of the year.

Google has publicly said it wants to help fund the future of Australian media. That is certainly something that we welcome. Supporting a fair and reasonable Code is the first step. The Code is essential to arrest further declines in professional news content in Australia – something our democracy depends on.

This is a critical moment in public policy development.  
It is too important to miss.

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