

Barton Deakin Brief: Mandatory Bargaining Code for News Media and Digital Platforms

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Overview

Treasurer the Hon. Josh Frydenberg MP and Minister for Communications the Hon. Paul Fletcher introduced legislation for a mandatory bargaining code for news media and digital platforms today.

The Code seeks to address issues that the ACCC identified regarding the competitive disadvantage that traditional news media faced when seeking remuneration. The Code is designed to ensure the fair remuneration of news media and to protect public interest journalism in Australia.

Background

In 2017, the ACCC was commissioned to provide recommendations to minimise the impact that digital platforms were having on competition in advertising markets. Among its findings, the review found that for every \$100 of online advertising spend, \$53 goes to Google, \$28 goes to Facebook, and \$19 goes to other participants. The highly concentrated nature of the market made these few digital platforms and traditional news media businesses inevitable trading partners. The ACCC suggested that the arrangement has been an unequal one where digital platforms have not needed to pay for the benefits following the news articles they share.

The Code

The Code is intended to:

- encourage the parties to undertake commercial negotiations outside the Code;
- enable digital platforms to publish standard offers, which will open an efficient pathway for smaller news media businesses to finalise agreements with digital platforms;
- establish a negotiation framework under the Code that allows both parties to bargain in good faith and reach binding agreements;
- ensure that an independent arbiter is able to determine the level of remuneration that should be paid under a fair and balanced final offer arbitration model should the parties be unable to reach agreement; and
- set clear and workable minimum standards for digital platforms, including requiring 14 days advance notice of deliberate algorithm changes that impact news media businesses.

If interested parties cannot reach a commercial agreement in good faith, a final offer arbitration model comes into effect. This ‘two-way value exchange’ accounts for the benefits that Google and Facebook get when individuals use their platforms, especially when accessing news media, as well as the benefits that traditional news media businesses get when individuals access their articles. However, money will only flow from the digital platform to the news media entities. An arbitral panel is chosen by the bargaining parties (or by the ACMA if the parties fail to agree on panel



members) and will select between the final offers made by the parties. Both parties must submit a final offer to the arbitral panel stating a remuneration amount.

The Bill specifically authorises collective bargaining and is not intended to prevent news business corporations from engaging in discussions with one another about forming a collective.

If an agreement is not reached between the parties within three months of the news business corporation indicating an intention to bargain, the matter will be subject to compulsory arbitration if the news business elects to begin arbitration.

Affected Organisations

The Code initially applies to Facebook NewsFeed and Google Search meaning that, among other services, Twitter, Instagram, and YouTube are exempt. The Treasurer has the authority to designate other services to be subject to the Code when there is evidence of unequal bargaining positions between parties, on advice from the ACCC, Treasury, and other parties.

The ABC and SBS are also captured by the Code. The ABC has given the commitment that revenue it earns under the code will be dedicated to increased regional journalism.

Ongoing Assessment

After the legislation is introduced, it will go to a Senate committee for review. Treasury will also conduct a review of the Code one year into its operation to ensure it is meeting the Government's policy intent.

For more information

- [Ministers' Media Release](#)
- [Explanatory Memorandum](#)

For more information, contact [David Alexander](#) on +61 457 400 524, [Grahame Morris](#) on +61 411 222 680, [Tahlia Robertson](#) on +61 438 259 671, [Cheryl Cartwright](#) on +61 419 996 066, or [John Fitzgerald](#) on +61 488 111 568.