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Commerce Commission | Te Komihana Tauhokohoko
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Via email: registrar@comcom.govt.nz

Submission of E tū union in relation to News Publishers' Association of New Zealand application for authorisation and provisional authorisation to engage in collective bargaining with Facebook and Google

Introduction

1. E tū supports the authorisations sought by the News Publishers Association (NPA) including its request for urgency. For brevity, we refer to the NPA proposals described in their submission as the 'Scheme.'
2. We have closely followed the work and recommendations of the Australian Consumer and Competition Commission (ACCC) related to achieving diversity and bargaining equity between Google and Facebook and Australian independent news media and believe that its findings, as presented in the NPA submission at 4.5 and 4.6, parallel the situation facing independent news media in New Zealand.
3. The Commerce Commission will have already reviewed the ACCC findings in the ordinary course of events and we suggest that no constructive purpose would be served, at least for the purposes of the NPA submission, by withholding a response pending a similar analysis of the NZ media environment.

E tū

4. E tū is the union for journalists and editorial production staff in New Zealand. We have 684 members in news media at most major news outlets, including all but two of the parties to the NPA application.
5. E tū's members in media have a strong interest in a diverse and sustainable news industry. The challenges facing newsrooms and declining numbers of journalists are well documented and don't need to be repeated here, and any measures that can strengthen the news media, and the working conditions for journalists and editorial production staff who work in it, are welcome. We approach the application by the NPA in this spirit.

Commentary

6. We assume that a positive finding by the Commission would include definitions and conditions. Insofar as the Commerce Act allows, we suggest that the following be considered.
 - a. That the term 'news' not to be so tightly confined by genre definition as to exclude any form of factual and information services provided by the Scheme's media participants.
 - b. The NPA submission emphasizes the public benefit of increasing the diversity, scope and standard of news and factual information. E tū submits that it is critical that the benefits of the Scheme be directed to active journalism rather than other aspects of news media operations.

E tū kahikatea · Hei whakapae ururoa · Awhi mai awhi atu · Tātou tātou e

Stand like the kahikatea tree · To brave the storms · Embrace and receive one another · We are one together

- c. That there be enough flexibility for the Scheme to accommodate all forms and distribution platforms of the media participants and allow the parties to develop a 'menu' of alternatives options and levels of participation. This could benefit smaller news providers and allow for new entrants and innovation.
- d. The NPA has sought a 10-year term. The ability of the parties to refer outcomes back to the Commission and to seek improvements in the process and to reflect changes in the media environment would, we believe, help ensure the sustainability of the Scheme.
- e. The Commission's finding should not preclude, on further application and submissions from the parties, a review of any conditions attached to the Scheme and codes of conduct made under it.
- f. We suggest that the Commission specify the type of information that the parties must provide when participating in the Scheme and include in its decision (after further submissions from the parties) a recommended 'Code of Conduct' against which it expects negotiations must take place to ensure a fair, reasonable, non-discriminatory and transparent outcome. In this context we note the ACCC position outlined at 4.10 and 4.11 in the NPA submission and agree with their view that identical concerns arise in New Zealand.
- g. Finally, we assume that neither the Commission nor the news media entities would agree to any aspect of the Scheme that had the effect of limiting future actions by a Government concerning the tax obligations of Facebook and Google, imposing any other form other forms of tariff on their activities, or any review by the Commission itself of anti-competitive behavior by Google and Facebook in any sphere of their New Zealand activity.

Coverage

E tū supports the view set out by TVNZ and RNZ in their submissions¹ to the Commission on the NPA's provisional authorisation application, that as broad and inclusive approach to the New Zealand media outlets able to be covered by this Scheme is advisable. Their proposal is to include their two entities (and Māori Television Service) within the arrangements with Facebook and Google. While they receive income directly from government, the three entities to varying degrees will be experiencing similar challenges with the approach taken by the global internet giants, and E tū supports their explicit inclusion in the Scheme.

Next steps

We would appreciate the opportunity for further engagement with the Commerce Commission. E tū does not claim confidentiality for our submission and is happy for it to be released.

Yours sincerely

Paul Tolich
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E tū

¹ <https://comcom.govt.nz/case-register/case-register-entries/news-publishers-association-of-new-zealand-incorporated2>