



Meta submission to the New Zealand Commerce Commission on NPA's provisional authorisation application

8 DECEMBER 2021

Executive Summary

Meta welcomes the opportunity to provide its response to News Publishers' Association of New Zealand Incorporated's (**NPA**) application for provisional authorisation to collectively negotiate with digital platforms such as Facebook (**Application**).

Meta makes this submission to provide the New Zealand Commerce Commission (**NZCC**) with detailed information about how news appears on Facebook, how we partner with news publishers, and our investments in the New Zealand news ecosystem. By providing this information, we aim to assist the NZCC to have a full and clear evidence basis on which to consider the Application.

To further assist the NZCC, we have also suggested some additional context that it is important to consider before assessing some of the statements in the Application about the impact of the COVID-19 pandemic on New Zealand news businesses and the Australian Competition and Consumer Commission's (**ACCC**) Final Report of the *Digital Platforms Inquiry (2019)*.

News represents a very small proportion of content that people see when they use Facebook. Meta recently started releasing a "Widely Viewed Content Report". This report demonstrates that *"News domains in the list accounted for about 0.3% of all News Feed content views. This remained unchanged from Q2 2021."*¹

Moreover, news is highly substitutable on Facebook. This was perhaps most apparent when we made a change to our News Feed ranking algorithm in January 2018 to prioritise content from friends and family.² These changes had the effect of reducing audience exposure to public content from all Pages, including news. Notwithstanding this reduction in engagement with news content, the past several years have seen an increase in people engaging on our services and increased revenues, suggesting both that news content is highly substitutable with other content for our users and that news does not drive significant long-term value for our business.³

However, we recognise that news is a public good. There is clearly value in having a robust and sustainable news ecosystem — both for New Zealand's democracy and for society. For this reason, and to ensure that those publishers that choose to share their content on our services and those users who wish to engage with news content on Facebook find it useful, we launched the Facebook Journalism Project (now called the Meta Journalism Project)⁴ four years ago to work with publishers to help them succeed on and off our platform.

¹ <https://transparency.fb.com/en-gb/data/widely-viewed-content-report/>

² Facebook Newsroom, *Bringing People Closer Together*, blog post published 11 January 2018, <https://about.fb.com/news/2018/01/news-feed-fyi-bringing-people-closer-together/>.

³ Facebook, *Q4 2018 Quarterly Earnings Presentation*, https://s21.q4cdn.com/399680738/files/doc_financials/2018/Q4/Q4-2018-Earnings-Presentation.pdf and see also Facebook, *FB Earnings Presentation Q3 2021*, https://s21.q4cdn.com/399680738/files/doc_financials/2021/q3/FB-Earnings-Presentation-Q3-2021.pdf

⁴ <https://www.facebook.com/journalismproject>

Through meaningful collaboration with publishers, of all sizes, we have built free tools, products and programmes. We are already working within New Zealand's news ecosystem to help publishers build and understand their audiences, as well as drive additional revenue and digital transformation, which we think is the best way we can help them build sustainable business models.

This has delivered real value to publishers. For example, in 2020 alone, organic referral traffic generated from Facebook sent 180 billion clicks to news publishers around the world — worth approximately US\$9 billion. To enable publishers to more deeply monetise their content on our services, we have also invested substantially to develop a variety of tools for news media across the full spectrum of business models to commercialise and generate revenue from their content on Facebook, including Instant Articles, in-stream video ads and Branded Content.

One example is our ANZ Reader Revenue Program,⁵ which we hosted in 2019, that included three New Zealand publishers. Overall, the programme saw publishers generate around NZ\$7 million in customer lifetime value (new paying readers multiplied by revenue generated over the lifetime of the average subscription or membership), 24,000 new subscribers and 160,000 new loyal readers.

To support greater plurality and diversity of New Zealand publishers, in November 2021, Meta committed to a new set of investments to help drive digital transformation and sustainability.⁶ Meta's investment – designed specifically for Aotearoa New Zealand and tailored to support the local industry, especially regional, digital and culturally diverse publications – consists of:

1. Supporting local publishers to develop sustainable business models through Meta's Accelerator and Grant Fund (a platform agnostic digital strategy mentoring, coaching and training programme);
2. Establishing a Meta Aotearoa News Innovation Advisory Group to advise us on these investments; and
3. Dedicated training for New Zealand publishers on growing and engaging digital audiences through a Facebook News Day.

We have already hosted the Facebook News Day -- all newsrooms across New Zealand were invited to attend -- with 68 journalists, social media producers and editors from 38 New Zealand newsrooms, mostly regional, taking part in the training.

In this way, we intend that our news investment strategy in New Zealand complements the aims of the New Zealand Government's Public Interest Journalism Fund⁷ to preserve and enhance public interest journalism adding to the diversity and plurality of a sustainable news media sector. We share the government's commitment and believe that by helping publishers reach people

⁵ <https://www.facebook.com/journalismproject/accelerator-australia-new-zealand-2020>

⁶ <https://aotearoanz.fb.com/post/a-commitment-to-support-the-sustainability-of-new-zealand-newsrooms/>

⁷ <https://mch.govt.nz/media-sector-support/journalism-fund#:~:text=The%20%2455%20million%20Public%20Interest.%2420%20million%20in%202022%2F23>

through free distribution, and investing in free tools and programmes specifically designed to help build audiences and revenue, we can support sustainable news business models for the long term.

We note that the Application refers to costs that are borne by New Zealand publishers to counter misinformation on our services. To assist the NZCC in its consideration of the Application, we have outlined the considerable work we do to combat misinformation online. This includes policies and proactive detection technology to prohibit and remove fake accounts and harmful health misinformation, increasingly before people are exposed to it. It also includes our investment in third-party fact-checking and systems to reduce the distribution of content rated as false by our fact-checkers, and products to inform New Zealanders about misinformation and provide more context around the content they see on Facebook.

To assist in informing New Zealanders to identify and avoid sharing misinformation, in October 2020, we partnered with Netsafe to launch the ‘Your News Bulletin’ educational campaign that reached over 1.6 million adult New Zealanders. We are also continuing to roll-out campaigns in platform to combat misinformation and top trending vaccine myths in multiple languages in New Zealand including te reo Māori, Samoan, Tongan and English.

With respect to the Application, in this submission we have shared more context and details to assist the NZCC to consider whether there are compelling reasons to support the application for provisional authorisation. The issues that the NZCC is considering as part of this Application are complex, nuanced and highly specific to the market dynamics in this industry in New Zealand and require detailed consideration more suited to the full authorisation process. For example, the Application relies on developments in Australia as evidence to support it, notwithstanding that the authorisations that were granted in Australia involve important differences that the NZCC will need to take into account, and the fact that the competitive landscape for media in New Zealand is distinct. Wholesale comparisons to Australia, without detailed consideration, are not appropriate. In addition, there are a number of issues that are important to the NZCC’s provisional authorisation assessment that are not addressed in the Application.

This submission focuses on NPA’s application for provisional authorisation. Meta looks forward to providing separate and more detailed comments on NPA’s application for full authorisation as the NZCC’s process progresses.

Meta’s role in the news ecosystem in New Zealand

Meta is committed to supporting quality journalism. While news is a small part of the experience of most New Zealanders on our platforms, including Facebook, we recognise that we can play a role in helping New Zealand’s news industry thrive in a changing digital world.

It is important to note that news publishers voluntarily choose to have a presence on Facebook and are in control of how their content appears. They establish Pages, promote and post their own content and make decisions about if and how to monetise that content. They do this because of the significant value they see from the free distribution channels Meta services provide. In this context, Meta invests in journalism in three main ways:

- **Audience, engagement and data/analytics:** Publishers voluntarily post, and allow their readers to share, content on our services to increase audience reach. This traffic flows from Facebook to the news websites where publishers can monetise this audience through their own advertising or subscription/membership tactics. From this engagement, publishers receive data and analytics to help them better understand and engage – and ultimately drive revenue from – the audience that comes from Facebook.
- **Revenue products and tools:** In 2017 we established Meta for Journalism and built a series of tools to assist news media of all sizes and across the full spectrum of business models to commercialise and generate revenue more deeply from their content on and off of Facebook, including Instant Articles, in-stream ads and Branded Content. We share revenue earned via these tools with publishers, at percentages that favour publishers.
- **Programmes and investments to boost and diversify revenue streams:** To support publishers to innovate in new content formats and in digital transformation, Meta has entered into commercial deals with publishers to support innovative content and technology projects to promote newsroom sustainability. We also fund a slate of programmes to support both the integrity of the content on our platforms and the sustainability of the news industry as it faces structural and cyclical challenges.

We will now provide more detail about each of these, including how they have benefited New Zealand publishers, some of whom are submitting the Application.

Audience, engagement and data/analytics

All news content from New Zealand news organisations on Facebook is published – or links to that content are published – on the platform voluntarily by those organisations. News content and links appear on Facebook either because local publishers choose to post or link their content on to Facebook, or because users choose to share a link to a news article on Facebook, often using sharing functionality that news publishers have added to their own webpages. In July 2020, one of New Zealand’s largest publishers, Stuff, exercised that choice and stopped publishing links on Facebook. The effect on Stuff’s audience was minimal, according to CEO Sinead Boucher. *“We were expecting that it would bring a significant drop in our traffic,”* Boucher said in an article published on US broadcaster NPR’s website. But this did not transpire. In what was a busy news year, NPR reported, traffic

increased. *"If we had remained on Facebook, we might have had another 5% growth,"* Boucher was quoted as saying.⁸

Unlike other digital platforms, Facebook does not actively reproduce content produced by New Zealand publishers. Nor does it scrape content produced by New Zealand publishers. Indeed, Facebook respects the monetisation and data flow decisions that news publishers have applied to that content when it is shared as a link by users. If the publisher has a paywall, the audience arriving from Facebook to that publisher's website will hit the paywall, therefore providing the publisher with an opportunity to convert the reader to a paying customer. In this case, the relationship between the reader and the publisher becomes a direct relationship with the publisher "owning" the customer, including the customer's payment details and associated data.

This value to publishers is substantial. In 2020 alone, Facebook sent around 180 billion clicks to news publishers around the world — worth approximately US\$9 billion.

To help news media drive traffic to their websites or apps and understand the performance of their posts and advertising campaigns, Meta also provides more than a dozen different data insights tools free-of-charge. Publishers can view audience, traffic, demographic and engagement data via insights products such as Page Insights, Instant Articles Insights, Facebook Analytics, and Creator Studio. The data is aggregated and anonymous but allows publishers to learn which content is performing well and which isn't. Meta also offers CrowdTangle, a data insights tool, that enables news media to use public data insights to benchmark their social performance against competitors and discover emerging stories on various sites, including Facebook.

Revenue products and tools

To respond to feedback from publishers that the value from organic news referrals and data was not sufficient to offset the decreasing returns from the growth in digital advertising, Meta has invested substantially to develop a variety of tools and means for news media of all sizes and across the full spectrum of business models to commercialise and generate revenue from their content on Facebook, including Instant Articles, in-stream video ads and Branded Content.

Instant Articles

Instant Articles is a Facebook-native reading experience for news articles, which continues to see growth in adoption and improved monetisation after the product was updated in early 2020 with several enhancements. Since the beginning of 2020, more than 5,700 new publishers have begun using or rejoined Instant Articles. These publishers join more than 50,000 pages that are part of the Instant Articles ecosystem. Publishers are using the product to achieve a variety of

⁸ <https://www.npr.org/2021/04/02/983211972/this-news-publisher-quit-facebook-readership-went-up>

business goals including boosting revenue from paying readers via subscriptions and creating a direct relationship with readers by signing them up for newsletters.⁹

It is the publisher's choice whether or not to render their content on Facebook as Instant Articles. If they do, the Instant Articles format allows for the inclusion of various types of ads. News media can monetise their content on Instant Articles by serving their own ads through directly sold publishing (for which the publisher keeps 100% of total ad revenue) and/or by using Meta's programmatic ad platform (Audience Network) – in which case, Facebook maintains an industry standard revenue sharing model.

Although Facebook does not prioritise Instant Articles in News Feed, the fast-loading and visually appealing reading format drives an engagement upside for publishers. This upside can be reflected in third-party ratings as publisher traffic due to the fact that the format supports third-party analytics tags.

In-stream ads

In recognition of the growth in video across Facebook, we developed in-stream ads, which are short ads that appear before, during, or after videos. Publishers can choose to sign up for the insertion of in-stream ads into their video content published on their Facebook Pages. This allows them to monetise their video content and receive a majority share of the ad revenue generated. Meta recently introduced more monetisation products for news organisations publishing news video to Facebook including shorter videos (15 seconds-plus) and live video.

There are several different formats for in-stream ads:

- Pre-roll ads play before the video starts. These are shown to people who actively seek out the content. The more viewers that seek out the content, the more payouts publishers receive.
- Mid-roll ads play during the video. These work best within a video that has natural break points. As most videos are still discovered in News Feed, we recommend that creators programme their content for mid-roll ads.
- Image ads are static image ads that are displayed under the content. Image ads help publishers earn money from videos that don't have a good place for mid-roll ads.
- Post-roll ads appear at the end of videos. They can be shown to viewers who do not receive a pre-roll ad or an image ad.

Branded Content

Publishers can partner with advertisers to create and post branded content on their Facebook Pages, subject to compliance with our Branded Content Policies. Advertisers directly pay publishers for the production and publication of the content and publishers retain 100% of the revenue generated. These partnerships are between the advertisers and publishers, and Facebook's tools facilitate the connection between audiences, publishers and interested advertisers.

⁹ See for example: <https://www.facebook.com/journalismproject/instant-articles-the-atlantic>

Programmes and investments to support digital transformation

We recognise quality journalism is a public good – informing and empowering citizens and holding the powerful to account. Meta supports news organisations as they do this important work while adapting to the changing digital landscape. In New Zealand and around the world, Meta invests in programmes and commercial deals to help publishers as they adapt to structural challenges – including the response to COVID-19 – while navigating shorter-term and cyclical issues. We also invest in policies, products, resources and programmes to combat misinformation.

Since 2018, Meta has invested US\$800 million globally to support the news industry, and plans to invest at least US\$1 billion more during the next three years.

Commercial news innovation investments

New Zealand publishers are beginning to experiment with new approaches to fund the important work they do for their communities. To support this work, Meta is presently engaging with New Zealand news publishers regarding our multi-million dollar investments in innovation, video and technology to promote newsroom sustainability. We are in negotiations – or have concluded agreements – for some of these investments with several New Zealand publishers, including some that are Participants in the Application.

Accelerator programme

To help publishers solve business challenges on their digital transformation journey, we offer a bespoke coaching, training and mentoring programme called the Accelerator. This programme is a world leading and platform agnostic training, coaching and mentoring initiative that brings together experts and publishers to fund and solve particular digital business challenges.

In 2019, we hosted the ANZ Reader Revenue Program to help publishers increase revenue through membership and subscription projects. The 11 publishers -- including three New Zealand publishers: NZME, The Spinoff and Newsroom -- generated around NZ\$7 million in customer lifetime value (new paying readers multiplied by revenue generated over the lifetime of the average subscription or membership), 24,000 new subscribers and 160,000 new loyal readers. During the height of COVID-19 lockdowns, Meta also made grants to these local publishers to contribute to easing financial challenges.¹⁰

Facing unique business challenges after the emergence of COVID-19, these organisations have held the line, keeping journalists employed during difficult financial times, and in many cases have managed to reinvest in their businesses to deliver commercial success despite the hurdles presented by the pandemic.

¹⁰ <https://www.facebook.com/journalismproject/programs/accelerator/accelerator-alumni-grants-2021>

The Spinoff has credited the programme with transforming its reader revenue approach and results. *“What we’ve learned in the Accelerator has been quite transformative for our membership programme,”* said Duncan Greive, founder and managing editor of the culture and current affairs publication.

Before joining the programme, Greive was wary about asking readers to contribute. But a reader survey found Spinoff loyalists were willing to pay to support The Spinoff’s “cause and mission” (rather than for merchandise or other reasons). Greive and another colleague wrote directly to readers, delivering messages via their email newsletters that asked for help funding the Spinoff’s journalism. This resulted in a 250% month-on-month spike in membership sign-ups.

Emboldened by their success, Greive’s team launched another test: subscription pop-ups on the site with similar messaging. Almost 300 new members joined during the testing week — up from 50 in the previous week.

“It probably has been the single most successful experiment we’ve ever done with our membership programme,” said Greive. *“It’s encouraged the spirit of experimentation, of not being afraid to try things.”*¹¹

In April 2021, BusinessDesk reported that The Spinoff had hit 10,000 paying members and that revenue “nearly doubled” year-on-year thanks to an influx of membership payments through the worst of the COVID-19 pandemic.

“Within six extraordinary weeks, we had a huge influx of members come in, which gave us a reliable cash flow stream to replace the very large (advertising) contracts we lost and didn’t get back,” Greive was quoted as saying in the article.¹²

Combating misinformation

We note that the Application raises concerns about misinformation on services such as Facebook. Consequently, we felt that it may be helpful to share more details about how Meta invests significantly in combating misinformation on our platforms. We use multiple means to achieve this goal.

Firstly, we have policies that prohibit fake accounts and also prohibit the sharing of misinformation that is likely to lead to imminent physical harm. For example, from July to September 2021, we disabled 1.8 billion fake accounts, 99.8% of which we proactively detected before anyone reported them to us.¹³ If a user posts content that goes against the Facebook Community Standards or Instagram Community Guidelines, we’ll remove it and may then apply a strike to the account. Accruing strikes leads to restrictions, such as on posting content or creating ads, for set periods of time. From the start of the pandemic to June 2021 we removed more

¹¹ <https://www.facebook.com/journalismproject/accelerator-australia-new-zealand-2020>

¹² <https://businessdesk.co.nz/article/media/the-spinoff-from-dark-days-to-daylight>

¹³ Facebook, Community Standards Enforcement Report July - September 2021, <https://transparency.fb.com/data/community-standards-enforcement/fake-accounts/facebook/#content-actioned>

than 20 million pieces of content from Facebook and Instagram globally for violating our policies on COVID-19-related misinformation.¹⁴ In the same period, we removed over 3,000 accounts, pages, and groups for repeatedly violating our rules against spreading COVID-19 and vaccine misinformation.

Secondly, for misinformation that is not likely to lead to real-world harm, we work with third-party fact-checkers to let people know when they are reading or sharing information (excluding satire and opinion) that has been disputed or debunked. We also limit the distribution of stories that have been flagged as false or misleading by these fact-checkers. The third-party fact-checkers with which we work — who are signatories to the non-partisan International Fact-Checking Network Code of Principles — investigate claims and make determinations about a post's truth or falsity. For New Zealand, we have entered into commercial arrangements with Australian Associated Press (AAP), which has New Zealand-based journalists, and Agence France Presse (AFP), to pay them for their fact-checking services.

When a fact-checker determines that a story is false, partly false or altered, we substantially reduce the distribution of that content. From the start of the pandemic through to June 2021, we also displayed warnings on about 190 million posts related to COVID-19 on Facebook, that our third-party fact-checking partners rated as false, partly false, altered or missing context, collaborating with 80 fact-checking organisations in more than 60 languages around the world.¹⁵ We know that when a warning screen is placed on a post, 95% of the time people don't click to view it.¹⁶

We apply notices to fact-checked posts and send notifications to the people who posted them. That way, people can see what the fact-checkers concluded and decide for themselves what to read, trust or share.

We also inform people that content might be misleading, even if it doesn't explicitly violate the Facebook Community Standards or Instagram Community Guidelines. Our goal is to make it easier for people to identify content that's timely, reliable and most valuable to them. For example, to give people more context about a news article before they share it on Facebook, we include a notification screen if the article is more than 90 days old. This notification helps people understand how old a given news article is and its source. To ensure that we don't slow the spread of credible information, especially in the health space, content posted by government health authorities and recognised global health organisations does not have this notification screen.

To further inform people about how to identify and avoid sharing misinformation, in October 2020, we partnered with Netsafe to launch 'Your News Bulletin', an educational campaign aimed at teaching people in New Zealand how to identify

¹⁴ G Rosen, Community Standards Enforcement Report, Second Quarter 2021, blog post published 18 August 2021, <https://about.fb.com/news/2021/08/community-standards-enforcement-report-q2-2021/>

¹⁵ G Rosen, Community Standards Enforcement Report, Second Quarter 2021, blog post published 18 August 2021, <https://about.fb.com/news/2021/08/community-standards-enforcement-report-q2-2021/>

¹⁶ G Rosen, How We're Tackling Misinformation Across Our Apps, blog post published 22 March 2021, <https://about.fb.com/news/2021/03/how-were-tackling-misinformation-across-our-apps/>

misinformation and address it effectively. The campaign reached over 1.6 million adult New Zealanders. Of these, 180,000 people visited the educational website and 11,500 people completed the training. We are continuing to roll-out campaigns in platform to combat misinformation and top trending vaccine myths in multiple languages in New Zealand including te reo Māori, Samoan, Tongan and English.

Meta also makes a substantial investment in informing the community about COVID-19 by developing tools and programmes that promote vaccines and connect people to reliable information from trusted sources. We do this in a number of ways, including by:

- **Connecting people to authoritative information:** We have provided authoritative information to help improve vaccine acceptance, connecting 2 billion people to resources from health experts through our COVID-19 Information Centre and educational pop-ups on Facebook and Instagram. In New Zealand, this includes information and health campaigns from Unite Against COVID-19, Ministry of Health, Ministry for Pacific Peoples, Te Puni Kokiri and Prepare Pacific, as well as the World Health Organisation.
- **Informing vaccination efforts through data:** Since April 2020, we have collaborated with Carnegie Mellon University and University of Maryland on a global survey to gather insights about COVID-19 symptoms, testing, vaccination rates, barriers to vaccinations and more. These tools also surface New Zealand insights, in some cases at a region-specific level. This is the largest survey of its kind, with over 70 million total responses, and more than 170,000 responses daily across more than 200 countries and territories. This survey is used by Institute for Health Metrics and Evaluation (IHME) and governments around the world.¹⁷

In light of the considerable investment that Meta makes to combat misinformation on our services, we suggest that the NZCC may wish to seek further details on how New Zealand publishers are incurring costs to counter misinformation as the Application claims.

New investments

Recognising that we want to support greater diversity and plurality of digitally enabled New Zealand publishers -- especially regional, digital, indigenous and culturally diverse publications -- in November 2021, Meta committed to a new set of investments in the New Zealand news ecosystem.¹⁸

Meta's investment – designed specifically for Aotearoa New Zealand and tailored to support the local industry, especially regional, digital, indigenous and culturally diverse publications – includes:

¹⁷ <https://about.facebook.com/actions/responding-to-covid-19/>

¹⁸ <https://aotearoanz.fb.com/post/a-commitment-to-support-the-sustainability-of-new-zealand-newsrooms/>

1. Supporting local publishers to develop sustainable business models through Meta’s Accelerator and Grant Fund (a platform agnostic digital strategy mentoring, coaching and training programme);
2. Establishing a Meta Aotearoa News Innovation Advisory Group to advise us on these investments in 1; and
3. Dedicated training for New Zealand publishers on growing and engaging digital audiences through a Facebook News Day.

1. Accelerator and Grant Fund

Meta has invested millions of dollars in its Audience Development Accelerator Program and Grant Funding Program in New Zealand. It will bring 12 publishers from regional, digital and culturally diverse publications together to innovate, learn from experts, and collaborate on new strategies to improve their business both on and off Facebook.

Funded and organised by the Meta Journalism Project,¹⁹ and tailored to New Zealand’s media industry, the Accelerator will be led by Blue Engine Collaborative — a consortium of coaches focused on driving digital audience growth and revenue, founded by Tim Griggs,²⁰ a former New York Times executive.

2. Meta Aotearoa News Innovation Advisory Group

In partnership with the independent NGO the International Center for Journalists, Meta has established the Aotearoa News Innovation Advisory Group – a group of five industry experts, with diverse experience across New Zealand’s media industry – to provide guidance on candidate selection and funding applications for the Accelerator Program and Grant Funding Program.

3. Facebook News Day -- free digital platform training and partner management support for New Zealand publishers

Meta hosted a virtual Facebook News Day in New Zealand on Friday, 26 November, 2021 to provide scaled coaching to newsrooms across New Zealand. Facebook News Day was designed to equip publishers with tools and insights to build, engage and understand their audiences, drive additional revenue and optimise for long-term digital business transformation and innovation.

All newsrooms across New Zealand were invited to Facebook News Day, with 68 journalists, social media producers and editors from 38 New Zealand newsrooms, mostly regional, attending the training event.

Further context and background to the Application

As set out above, this submission focuses on NPA’s application for provisional authorisation, and Meta looks forward to providing separate and more detailed

¹⁹ <https://www.facebook.com/journalismproject>

²⁰ <https://www.linkedin.com/in/tim-griggs-3517636/>

comments on NPA's application for full authorisation as the NZCC's process progresses.

In assessing the application for provisional authorisation, it will be important for the NZCC to consider a range of issues as set out in the NZCC's Guidelines²¹ which are more appropriately considered as part of the full process for authorisation, rather than on a provisional basis.

Whether the the conduct would further the purpose of the Commerce Act to promote competition in markets for the long-term benefit of consumers within New Zealand

As noted in the Application, the conduct being sought to be authorised involves arrangements that would fix, control or maintain the price of products (content) the participants supply in competition with each other.²² Such arrangements are typically viewed as involving the most serious conduct under the Commerce Act and are prohibited without needing to consider whether they have the purpose or effect of substantially lessening competition.²³ This factor and the potential for harm – which is indeed the reason why the Applicants have sought authorisation – highlights the importance of ensuring that the basis for any authorisation is robust and the Application should be fully tested before the conduct is allowed to proceed.

²⁴

This is particularly the case given that many of the matters raised in the Application are complex and evolving (e.g. issues relating to the value exchange between Meta and news media businesses, Meta's investment in the New Zealand media ecosystem, and the potential impact of COVID-19). These are all matters that require detailed and careful consideration, potentially beyond what may be possible in the provisional authorisation process.

Whether there are compelling reason to support the application for urgent provisional authorisation

As noted in the NZCC's Guidelines, provisional authorisation may be suitable in situations where there is a level of urgency.²⁵ Consistent with this, the legislative history of section 65AD indicates that an application for provisional authorisation needs to be responding to a specific urgent development, and we note that the

²¹ Commerce Commission, *Guidelines on Approach to Authorisations under the COVID-19 Response (Further Management Measures) Legislation Act (May 2020) (COVID-19 authorisation guidelines)*, paragraphs 49-51 (NZCC Guidelines).

²² Commerce Act, section 30 and 30A.

²³ Commerce Commission, *Competitor Collaboration Guidelines* (January 2018), paragraph 8.

²⁴ Meta understands this starting point to be consistent with the NZCC's position that it is unlikely to grant provisional authorisation in respect of an agreement that has the potential to substantially lessen competition unless there are compelling reasons in the public interest to do so.

²⁵ NZCC Guidelines, paragraph 50.2.

NZCC has also acknowledged that provisional authorisation is only available temporarily, during the “epidemic period”.²⁶

As reflected in the NZCC’s first provisional authorisation determination, such consideration necessarily includes whether there is the potential to realise a substantial benefit that could be unavailable if the applicant could not engage in the conduct until the NZCC has given due consideration to the full authorisation application, and correspondingly whether provisional authorisation would avoid an imminent and substantial detriment in that period.²⁷ This assessment is particularly important and indeed nuanced in light of the challenges that the news industry has been grappling with over many years (as recognised by the NZCC itself).²⁸

The issues before the NZCC are complex and require detailed consideration

As set out above, the issues that the NZCC is considering as part of this Application are complex, nuanced and highly specific to the market dynamics in this industry in New Zealand. They require a fulsome analysis which is not suited for reaching a view on in a provisional authorisation process,²⁹ and are likely to be more suited to the NZCC’s full authorisation review process. For example:

- 1. The Application cites comparisons with authorisations granted in Australia but there are important differences for the NZCC to take into account.** The Application draws extensively on the ACCC’s authorisation of collective bargaining with digital platforms, including to support the notion of re-balancing bargaining power.³⁰ At the outset, Meta considers that any findings of bargaining power imbalance on which those authorisations are based are not supported by actual evidence of our interactions with news media businesses or the way that news media businesses distribute their content to consumers.³¹ The Application also fails to reflect the various ways that New Zealand publishers benefit from our services, from our customised products and tools, and commercial deals and programmes as explained above. This lack of bargaining power imbalance is even more apparent given the highly dynamic competitive landscape that exists for digital platforms, that has been intensified by the increased digitisation of so many more of our

²⁶ See Commerce Commission, *New Zealand Tegel Growers Association Incorporated* [2021] NZCC 26 paragraph 23.2; Section 65AD of the Commerce Act allows the NZCC to grant provisional authorisation during the epidemic period (i.e. while the effects of the outbreak of COVID-19 are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand significantly (Epidemic Preparedness (COVID-19) Notice 2020)). This section is automatically repealed as soon as the epidemic period expires under section 65AE.

²⁷ See Commerce Commission, *New Zealand Tegel Growers Association Incorporated* [2021] NZCC 26 paragraph 67.2 and 67.3.

²⁸ See Commerce Commission *NZME Limited and Fairfax New Zealand Limited* (2 May 2017) where the parties submitted [at paragraph 978], and the NZCC accepted (at paragraph 1052), that advertising yields have been declining since as early as 2013.

²⁹ See Commerce Commission, *New Zealand Tegel Growers Association Incorporated* [2021] NZCC 26 paragraph 44.

³⁰ ACCC, *AA1000551: Country Press Australia* (5 August 2021, *CPA decision*); ACCC, *AA1000565: Commercial Radio Australia* (29 October 2021, *CRA decision*).

³¹ See [Facebook response to the Australian Treasury Laws Amendment \(News Media and Digital Platforms Mandatory Bargaining Code\) Bill 2020](#)

daily interactions due to the public health orders to respond to the COVID19 pandemic.³²

But in any event, there are additional, important differences between the Application and the ACCC processes that the NZCC should take into account. In particular, both Country Press Australia's application to the ACCC for authorisation and the Minderoo Foundation's class exemption notice involved publishers with a much smaller share within a media landscape that has far greater diversity and plurality. In the CPA determination, the ACCC stated that "*the members of CPA are predominantly small businesses and they provide news services in regional and local communities published in print and online. CPA submits that instances of overlapping products are rare*". Similarly, in the Minderoo Foundation's class exemption, all publishers are small businesses with an aggregate turnover of less than A\$10 million per annum. In contrast, the Application potentially involves a number of large participants – and the majority of participants – competing in a highly concentrated media industry (as noted further below). This is clearly a material difference compared with the Australian authorisation decision and class exemption notice.

2. The competitive landscape for media in New Zealand is distinct and wholesale comparisons to Australia, without detailed consideration, are not appropriate. At a high level, the key distinctions relevant to the NZCC's assessment include:

- the significant concentration of the industry in New Zealand compared to Australia and even internationally, which has been well recognised by the NZCC in an important recent merger decision³³ as well as the continued consolidation of the industry particularly with smaller digitally disruptive players,³⁴ and
- the significantly greater number of news media businesses that would potentially be included in the authorisation than any application in Australia. As set out above, the Application encompasses a number of large participants – and the majority of participants – in the news media industry in New Zealand. This is clearly a material consideration in assessing any competition impacts.

3. A number of issues that are important to the NZCC's provisional authorisation assessment are not addressed in the Application, so it is not possible for the NZCC to assess them. The issues are particularly important given the complexity of the industry dynamics and matters set out above and include whether provisional authorisation and the resulting conduct would

³² See the [OECD report on Digital Transformation in the Age of COVID-19 \(2020\)](#) and the report by Raygun cited in [OpenGov Asia](#), [IT Brief NZ](#), [Scoop Business](#).

³³ See Commerce Commission, NZME Limited and Fairfax New Zealand Limited (2 May 2017) at [X40]; NZME and Fairfax v Commerce Commission [2017] NZHC 3186 at [245]; NZME, Fairfax and Stuff v Commerce Commission [2018] NZCA, 389 at [122].

³⁴ For example, NZME's recent agreement to purchase BusinessDesk: <https://www.rnz.co.nz/news/business/456866/nzme-to-buy-specialist-news-website-businessdesk>

materially alter competitive dynamics in the market, and whether it (or the failure to grant provisional authorisation) would result in any harm to customers, competitors or the public.³⁵

Meta looks forward to engaging further with the NZCC's process

Meta appreciates the NZCC has adopted a short timeframe to consider the application for provisional authorisation. Please do not hesitate to contact us if you require any further information regarding our submission, and we look forward to engaging more fully as the process continues.

³⁵ See NZCC Guidelines, paragraphs 49-51; Commerce Commission, New Zealand Tegel Growers Association Incorporated [2021] NZCC 61 and 72.