

Submission in response to NPA Provisional Authorisation Application dated 23 November 2021**1 December 2021****1. Introduction**

- 1.1 Television New Zealand Limited (**TVNZ**) is the country's leading free to view video content provider. It reaches approximately 2.2 million New Zealanders every day (and 3.7 million per month), predominantly through its three main free-to-air (**FTA**) broadcast channels, TVNZ 1, TVNZ 2 and TVNZ DUKE as well as TVNZ OnDemand, 1 NEWS, Re: and HEIHEI. TVNZ is owned by the Crown but operates as a self-funded, commercial entity by virtue of the Television New Zealand Act 2003. Its predominant source of revenue is from advertising on its FTA channels and online services.
- 1.2 On 23 November 2021 the News Publishers Association of New Zealand Incorporated (**NPA**) made an application for provisional authorisation (**Application**) on behalf of itself, the current and future members of the NPA, and any other media persons/entities that fall within the scope of the Arrangement for which provisional authorisation is sought.
- 1.3 That Arrangement would allow the Participants to collectively bargain with each of Facebook and Google (**Digital Platforms**) to secure fair compensation for their content that appears on Digital Platforms, engage in discussions and exchange information about those collective negotiations, and make and give effect to agreements arising from those negotiations.
- 1.4 TVNZ is a producer of New Zealand focused journalistic and news content, which it delivers on its FTA channels and online on 1 NEWS and Re:. It supports the Application and agrees with the grounds for provisional authorisation set out in the Application.
- 1.5 However, TVNZ considers that the class of media persons/entities that can participate in the Arrangement is too narrowly defined. We recommend in the Appendix to this submission some short amendments to clauses 2.2(c), 2.3 and 2.4 so that all New Zealand media producers who are not overseas persons are able to participate in the Arrangement.

2. TVNZ digital news

- 2.1 TVNZ's digital news services share the same issue with reliance on the Digital Platforms as the Applicants, and the significantly unbalanced relationship and lack of bargaining power. While these 'must have' Digital Platforms are themselves able to monetise our news and current affairs content, as the Applicants have identified, approximately only 10c in every dollar spent on digital advertising in New Zealand goes to the New Zealand news producers that invest in producing that journalism and content¹. Based on the level of investment required to operate our digital news services to an attractive, informative, credible and competitive quality, that level of return does not support a sustainable future.
- 2.2 TVNZ currently invests over \$[REDACTED] per annum to deliver quality and credible news and current affairs to New Zealanders on-air and online, in all the ways viewers choose to watch and engage with it. That investment has helped to ensure 1 NEWS is New Zealand's most trusted news source².
- 2.3 To keep up with the significant shift of audiences who look to consume their news on these Digital Platforms, TVNZ has dedicated [REDACTED]% of our total investment in news and current affairs (being at

¹ Advertising Standards Authority data for 2020.

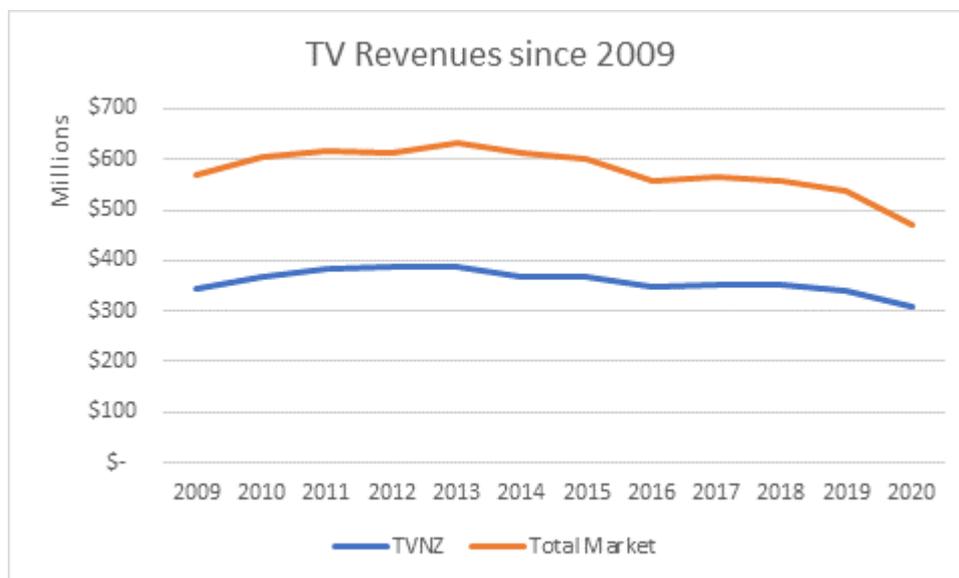
² Kantar/TVNZ Market Tracker Jul21-Aug21, AP15-60, monthly sample, and NZ On Air 'Where Are The Audiences?' 2021 survey results.

least \$[redacted] per annum) into growing and providing our digital news service 1 NEWS online to ensure it is suitable and attractive to the digital audience.

- 2.4 Additionally, TVNZ has invested over \$[redacted] a year on average across the last four years towards Re:, our youth-focused current affairs service delivered as a digital media platform of documentary videos, articles and podcasts that resonate with youth, Māori, Pasifika, LGBTQIA+, migrant and regional audiences.
- 2.5 To ensure we have a chance to compete effectively online and with others reliant on the Digital Platforms, TVNZ has invested an additional \$[redacted] this year into the technology that supports our digital news services.
- 2.6 From January 2020 to October 2021, TVNZ's 1 NEWS online reached approximately 3 million users on average each month³. 1 NEWS online relies on Facebook for [redacted]% of its traffic, and Google for [redacted]%.⁴
- 2.7 Over the last six months, Re: achieved [redacted] average monthly video views across all its platforms, and [redacted] average monthly unique website users⁵. The Re: website relies heavily on Facebook for [redacted]% of its referral traffic and on Instagram for [redacted]% of that traffic. Re: distributes content to its [redacted] Facebook followers and [redacted] Instagram followers, and via Google for its [redacted] YouTube subscribers.

3. Decline in advertising revenue

- 3.1 Like the Applicants, TVNZ has experienced significant decline in advertising revenue as audiences use the Digital Platforms to source their news, and advertisers have followed.
- 3.2 Since its peak in 2013, the total annual TV advertising market has declined 26% (\$165m)⁶. [redacted]



³ Google Analytics.

⁴ Google Analytics.

⁵ Google Analytics.

⁶ Advertising Standards Authority <https://www.asa.co.nz/industry/asa-advertising-turnover-report/>.

3.3 Over the same period, online advertising revenues (the majority of which are controlled by Facebook and Google) have risen 129% (\$607m).⁷

4. Detriments of Provisional Authorisation

4.1 If every New Zealand media producer who is not an overseas person is able to be a Participant to the Arrangement, as advocated below, we agree with the Applicant that the Arrangement will not result in any public detriment.

5. Class of Participants

5.1 As drafted, Participants in the Arrangement for which provisional authorisation is sought is limited to the NPA, its current and future members, and *“any other independent media persons / entities that produce New Zealand focused journalistic and news content that are listed on the NZX2 or are otherwise not an “overseas person” (as currently defined in the Overseas Investment Act 2005 (“OIA”)) and that choose to participate in the Arrangement.”*

5.2 Paragraph 2.4 explains, for the avoidance of doubt, that the Arrangement is not intended to be open to participation by TVNZ.

5.3 While it is clear why overseas persons are excluded, it is not at all clear why New Zealand media entities must be listed on the NZX to participate in the Arrangement. As discussed in section 2 of this submission, TVNZ is a major provider of NZ journalistic and news content on Digital Platforms.

5.4 The Application refers to our “different structure” which we take to be a reference to our ownership by the Crown. However, TVNZ is a self-funded, commercial entity (by virtue of the Television New Zealand Act 2003) akin to the NPA members and other media entities.

5.5 An authorisation that excluded TVNZ from participating in the Arrangement would confer a competitive advantage on participants and put TVNZ at a competitive disadvantage which would reduce the public benefit and in fact be a public detriment.

5.6 We therefore submit that all New Zealand media producers who are not overseas persons should be able to participate in the Arrangement; we suggest in the Appendix to this submission some drafting changes to achieve this outcome.

⁷ Advertising Standards Authority, 2013-2019 <https://www.asa.co.nz/industry/asa-advertising-turnover-report/>

APPENDIX

2. OTHER PARTIES TO THE ARRANGEMENT

2.1 The Applicant is submitting this application for provisional authorisation on behalf of itself, and the parties to the Arrangement (the "Participants") for which provisional authorisation is sought.

2.2 The Participants include:

(a) NPA;

(b) NPA's current and future members ("Members") that choose to participate in the Arrangement. NPA's Members currently include NZME Limited ("NZME"), Stuff Limited ("Stuff"), Allied Press Limited ("Allied Press"), The Gisborne Herald Company Limited ("Gisborne Herald"), Ashburton Guardian Company Limited ("Ashburton Guardian"), Greymouth Evening Star Co Limited ("Greymouth Star"), National Media Limited ("Wairarapa Times-Age"), The Westport News Limited ("Westport News"), The Beacon Printing & Publishing Company Limited ("The Whakatane Beacon"), and The Wairoa Star Limited ("Wairoa Star"); and

(c) any other ~~independent~~ media persons / entities that produce New Zealand focused journalistic and news content that are ~~listed on the NZX2 or are otherwise~~ not an "overseas person" (as currently defined in the Overseas Investment Act 2005 ("OIA")) and that choose to participate in the Arrangement. That could, for example, include a number of other locally-owned online, regional, suburban, and community publishers. For example, Hex Work Limited ("The Spinoff") has indicated an interest in participating in the Arrangement should it be authorised.

2.3 In essence, the Arrangement is open for participation by ~~independent~~ New Zealand news media producers ("~~Independent~~ NZ News Media").

2.4 For the avoidance of doubt, given their different structure and requirements (including the ability to negotiate international or other arrangements), the Arrangement is not intended to be open to participation by:

~~(a) media entities owned or established by the Crown, such as Television New Zealand Limited ("TVNZ"), the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) ("Māori TV"), or Radio New Zealand Limited ("RNZ");~~

~~(b) media entities not currently listed on the NZX or that are otherwise "overseas persons" (as defined in the OIA), such as Discovery NZ Limited ("Discovery NZ").~~