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Our ref: 1033956

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Commerce Commission
PO Box 2351
Wellington 6140
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By email: registrar@comcom.govt.nz

NPA PROVISIONAL AUTHORISATION

- 1 We act for Discovery NZ Limited (**Discovery**).
- 2 We refer to the application for provisional authorisation filed by the News Publishers' Association of New Zealand Incorporated (**NPA**) dated 23 November 2021 (**NPA Provisional Authorisation**) and the application for authorisation made on the same date (**NPA Authorisation**).
- 3 Please treat this letter as a submission on behalf of Discovery, in relation to the NPA Provisional Authorisation.
- 4 Discovery NZ is opposed to the granting of the NPA Provisional Authorisation for the following reasons:
 - 4.1 Both the NPA Provisional Authorisation and the NPA Authorisation raise a number of issues relating to the market power of Google and Facebook, which need to be explored and affect the relevant markets.
 - 4.2 However, the proposed arrangement specifically excludes certain market participants, including Discovery.
 - 4.3 The proposed arrangement, because of the exclusion of these market participants, will likely result in a substantial lessening of competition.

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- 4.4 The proposed arrangement will have significant detrimental effects on the excluded market participants, which will impact on the market as a whole.
- 4.5 There is no good reason why Discovery NZ has been excluded from the proposed arrangement and the NPA Provisional Authorisation and the NPA Authorisation application do not explain the rationale for the exclusion.
- 4.6 We note that legislation in Australia (Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021), upon which the NPA Authorisation is based, does not have a similar exclusion for international news businesses, and in fact international news businesses are covered by the media bargaining code if they meet certain criteria.
- 4.7 The scope of the proposed arrangement and the effect on the market and other market participants should be given closer scrutiny than is possible if the NPA Provisional Authorisation were to be granted. It may be necessary to widen the scope of the proposed arrangement in order to address the potential anti-competitive effects.
- 4.8 It is not necessary to grant the NPA Provisional Authorisation to enable due consideration to be given to the application. In fact, due consideration of all issues should be given to the application before authorisation is granted, provisional or otherwise.
- 4.9 The NPA Provisional Authorisation application does not set out a compelling case for urgency. The issues raised as the basis for urgency are not new - they are well known and traversed and, while Discovery accepts that those are real issues, they do not outweigh the need for proper consideration, given the potential impact on the market and other market participants.
- 4.10 Discovery intends to put in submissions in relation to the NPA Authorisation, but it needs further time to prepare these submissions.
- 5 Please contact us if you require any further information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Alicia Murray'.

Alicia Murray

Partner

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