

4 February 2022
Commerce Commission
PO Box 2351
Wellington 6140
New Zealand

To the Commerce Commission,

Manatū Taonga notes the News Publishers Association application for authorisation of collective bargaining under ss 65AA and 58 of the Commerce Act 1986, and the release of a statement of preliminary issues from the Commerce Commission (the Commission) that are important in deciding whether to grant authorisation. The Commission will authorise the proposed arrangement for collective bargaining if it is satisfied that the arrangement will result, or be likely to result, in such a benefit to the public that the conduct should be permitted.

Manatū Taonga provides the following comments as an interested party, and as the Government's advisor on media and broadcasting policy. High quality media is a fundamental public good and a vital component of New Zealand's democracy. Ensuring New Zealanders can access accurate, trusted and relevant news content is of critical importance to supporting the free flow of information that underpins thriving communities.

There has been a fundamental shift in the way that people consume news and media. Traditional broadcasting and news publications are now predominantly accessed via online digital platforms that act as content aggregators to sell advertising and other services. This has altered the way that media markets operate.

The Australian Competition and Consumer Commission (ACCC) has found that Google and Facebook have substantial bargaining power in dealings with news media businesses in Australia.¹ We consider that this same bargaining imbalance exists in New Zealand and is evident by the limited number of New Zealand media companies that have been able to enter into commercial discussions.

The advent of commercial arrangements in other jurisdictions shows that news content has financial value to digital platforms. New Zealand media companies should therefore be remunerated for the use of news content via commercial arrangements, as is the case in similar markets.

We note paragraph **38.1** of the statement of preliminary issues, which states the Commission will consider the likelihood that New Zealand news media companies would be supported by public funding in the long term.

In the last two years public funding for media has increased substantially, including:

¹ The Australian Competition and Consumer Commission, Digital Platforms Inquiry Final Report, July 2019 <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>

- The Public Interest Journalism Fund. The fund consists of \$55 million over three years to provide transitional support to media organisations to assist the sector to evolve in a way that ensures the longer-term sustainability of New Zealand media companies.
- The Media Support Package. In 2020, the Government provided \$50 million to media organisations to support companies through the COVID-19 pandemic. The support was focussed on reducing cost and easing cashflow pressure for media organisations.
- Public media through NZ On Air and Radio New Zealand (RNZ). In the 2020/21 year, this amounted to a total of \$170 million, which includes \$42 million for RNZ.

Financial compensation through commercial arrangements would provide a sustainable basis for the ongoing viability of news media and journalism in Aotearoa New Zealand.

We note paragraph **38.2** of the statement of preliminary issues, which states that the Commission will consider the likelihood that a bargaining code similar to Australia's News Media Bargaining Code would be enacted, that could enable New Zealand news media companies to successfully enter into agreements with digital platforms.

Financial agreements for news media content are primarily a commercial matter. News content has value best determined by the market. However, due to the lack of progress in commercial discussions, Manatū Taonga is considering options to support New Zealand media companies to reach commercial arrangements with digital platforms, should financial compensation not materialise through negotiations.

The development of government regulation is time consuming and requires considerable public funding and resources. Developing effective regulatory solutions commonly takes years.

Should you wish to discuss Manatū Taonga's submission further, please contact Carl Olive, Manager | Media Policy on (04) 463-0379 or carl.olive@mch.govt.nz.

Yours sincerely,

Emily Fabling

Pou Mataaho o Te Aka | Deputy Chief Executive, Policy & Sector
Performance
Manatū Taonga | Ministry for Culture & Heritage