



Meta submission in response to the New Zealand Commerce Commission's statement of preliminary issues on NPA's authorisation application

11 FEBRUARY 2022

Executive summary

Meta welcomes the opportunity to provide its response to the statement of preliminary issues (**SOPI**) published by the New Zealand Commerce Commission (**NZCC**) in relation to the News Publishers' Association of New Zealand Incorporated's (**NPA**) application for authorisation to collectively bargain with digital platforms such as Meta (**Application**).

The purpose of our submission is to provide the NZCC with additional context and information about how publishers and their readers choose to share news on Facebook and how we work with news publishers, including in New Zealand. We hope that this will assist in the consideration of the Application, as well as to provide details to contextualise some of the claims made.

We recognise that news is a public good. There is clearly value in having a robust and sustainable news ecosystem — both for New Zealand democracy and for society more broadly.

When considering the Application, it is important to understand that the challenges that the news industry currently faces predate Facebook and have existed since the commercial phase of the internet began in the late 1990. Although the challenges predate Facebook, in considering how Meta's collaboration with the news industry can form part of the solutions to promote news sustainability, it is important to understand that unlike other services such as search, Facebook does not index and copy content. News appears on Facebook because publishers, like many other businesses, voluntarily create pages on Facebook and post links to their own content. Users may also post links to these articles and do so at the encouragement of publishers who often include links to social media platforms on each article to prompt their readers to share. They do this because they find it valuable to do so.

Many news publishers use Facebook as a free means to reach an existing audience or an audience that they may previously not have had access to, and to monetise their content in new and innovative ways. Reduced cost of distribution enables more journalists and publishers to create and distribute content to more people—and do it faster and more easily.

That New Zealand publishers regularly exercise their choice about whether the use of Facebook is valuable to their business is evident by Stuff's decision not to use our services. In July 2020, Stuff chose to stop publishing links on Facebook because it was

not right for their business and according to CEO Sinead Boucher, the impact to their business was minimal.¹

With respect to the links, photos and videos that news publishers choose to share on our services, all evidence indicates that the value exchange favours publishers. For example, we made a change to our Feed ranking algorithm in January 2018 to prioritise user-created content.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 links, the past three years have seen an increase in people engaging on our services and increased revenues, suggesting both that news is highly substitutable with other content for our users and that news does not drive significant long-term value for our business.³

News links represent only a very small fraction of the content in the average Facebook users' Feed, because Facebook is primarily a service for sharing user-created content that sparks conversations and meaningful interactions. The relatively small role that Facebook plays in the New Zealand news ecosystem is evident by the data. In January 2022, traffic to the Stuff, NZ Herald, ODT, The Spinoff and Scoop websites comprised on average 69.41% from visitors navigating directly to those websites compared with just 7.05% from social media networks combined (including Facebook, Twitter, TikTok and others).⁴

However, to the extent that publishers and consumers choose to share news content on our services, we want to ensure that this is a valuable experience for publishers and consumers alike. This is why we have invested in tools to help publishers receive data about how their content is performing on our services and to help them more deeply drive value from their content, through audience and monetisation tools.

In addition, we have steadily increased our investments in the New Zealand ecosystem over recent years to support further innovation by Kiwi newsrooms, above and beyond the organic content they choose to share and from which they derive value. We have undertaken digital strategy programs such as the 2019 Australia and New Zealand Accelerator and the 2021 Accelerator alumni grant fund (made to support alumni newsrooms during the highly uncertain time immediately following the outbreak of the

¹ NPR, This News Publisher Quit Facebook. Readership Went Up (2 April 2021), <https://www.npr.org/2021/04/02/983211972/this-news-publisher-quit-facebook-readership-went-up>

² Facebook Newsroom Bringing People Closer Together (11 January 2018), <https://www.facebook.com/business/news/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

⁴ This analysis is based on SimilarWeb data regarding the marketing channels used by the NZ Herald, Stuff, The Spinoff, ODT, and Scoop websites on desktop, in January 2022.

pandemic). Additionally, we recently announced a four-part, multimillion dollar investment in New Zealand's news ecosystem including the Aotearoa Audience Development Accelerator.

Meta has already entered into a bespoke commercial deal with The Spinoff, and is presently in active negotiations with a diverse set of publishers in relation to further commercial deals.

These commercial engagements have been happening without collective bargaining. Any claimed benefits of the proposed conduct must be measured against this baseline of Meta's commercial engagements and investments that support individual publishers, and public interest journalism in New Zealand overall. The "counterfactual" comparison is not, as the Application appears to suggest, collective negotiation or no commercial engagement. And indeed, collective bargaining may cause New Zealand publishers to misunderstand commercial arrangements and value exchange between Meta and news publishers, and not understand the value that publishers already receive from organic content and tools we provide to further drive that value, and therefore anticipate commercial deals for this type of content.

The Application asserts that an ability for news media publishers to coordinate with each other will deliver public benefits. However, it does not address in any material way either:

- the likely harm to competition in relation to the production and supply of news – as the NZCC noted in *NZME/Fairfax*, competition between news publishers in supplying news content to readers, ensuring media plurality necessary for a well-functioning democratic society, is particularly important in the New Zealand context given the concentration of media ownership;⁵ or
- what public benefits the proposed coordination between major news media competitors will deliver over and above what is likely to occur in any event if authorisation is not granted and publishers continue to engage with Meta as they can and do today.

Similarly, the Application does not address in any material way the specific market dynamics of the New Zealand media industry. It is also not appropriate for any assessment to accept uncritically any findings or observations in other countries and seek to simply transpose them to New Zealand, as the Application appears to invite the NZCC to do. Specifically, it is not appropriate to simply import conclusions reached by the Australian Competition and Consumer Commission (**ACCC**) in an Australian context into the New Zealand media landscape without analysing local market dynamics.

⁵ NZCC, *NZME Limited and Fairfax New Zealand Limited* (2 May 2017) at [X40] and [X43].

There is clear evidence that New Zealand publishers can distribute their content, reach audiences and experience significant growth without sharing their content on Facebook. There are many alternatives, including direct engagement with audiences, news apps and aggregators, and the many other digital platforms which act as a source for online news. Similarly, the evidence does not support the assertion that there is a significant bargaining power imbalance between Meta and New Zealand news publishers. Any assessment of this issue must be founded on local evidence and analysis. For example, in December 2021, even following its choice not to voluntarily post its content on Meta services, Stuff was ranked as the fifth most visited website in New Zealand (the NZ Herald was ranked ninth).⁶

Against this background, we suggest that the Application is not necessary and we welcome the opportunity to continue to collaborate with New Zealand publishers to support them to connect with new audiences and help support their path to long term sustainable digital businesses, and to invest more broadly in the New Zealand ecosystem.

⁶ Stuff.co.nz, Stuff rejoins Nielsen rankings in top media position (17 December 2021), <https://www.stuff.co.nz/business/127321189/stuff-rejoins-nielsen-rankings-in-top-media-position>

Table of contents

Executive summary	2
Table of contents	6
How Meta works with news publishers	7
Trends and assumptions	7
The value Meta drives to publishers	8
The NZCC should assess fully the likely impact of the proposed conduct where it will have the effect - which is in the production and supply of news content	12
Market definition should allow the key impact on competition to be isolated and measured	12
There is no market for news referral services or user data	12
There is also no separate market for social media or display advertising	14
The impacts on competition and any potential benefits should be assessed against a realistic counterfactual reflecting Meta’s engagement and investment	15
Meta is not an unavoidable trading partner – news publishers can reach audiences in a range of ways	16
Any assessment of the Application should be based on evidence of benefits and detriments in New Zealand	17
Claims that collective bargaining is needed to fund media companies to combat misinformation / malinformation are misplaced	19
Conclusion	27

How Meta works with news publishers

To assist the NZCC to fully consider the Application, it is helpful to share more details about the trends and misunderstandings related to the challenges of news sustainability, and to also understand how Meta works with publishers.

All of these occur without any need for authorisation to enable conduct that would otherwise contravene the Commerce Act. This should be the “baseline” against which any harms to competition and public benefits are assessed.

Trends and assumptions

Much of the public commentary with respect to the current challenges facing news sustainability overlooks the causes for these challenges and also how Meta actually works with news publishers, and the value we provide.

Firstly, it is not correct that the services that Meta provides caused the challenges to the publishers’ business model. These challenges have existed since the commercial phase of the internet began in the late 1990s. Already in 2005, two years before the Facebook app began running ads, senior media executives were noting that the news industry had been slow to react in the face of the internet.⁷ Digital technology has driven the cost to distribute information to zero, but has also significantly reduced the cost of advertising.⁸ At the same time, many news publishers decoupled their classifieds businesses and stopped using these to subsidise the creation of news content. The rise of platforms such as eBay and Kiwi success story, TradeMe, further illustrates the disruption to business models in traditional publishing houses. Indeed, when TradeMe was eventually purchased by former Stuff owner Fairfax, it was not done to subsidise the creation of news content and was ultimately on-sold. The continued and misguided focus on the services that Meta provides as a cause of the challenges facing the news industry obscures the true challenges and this mis-diagnosis of the problem, now more than ever, hinders the identification of effective and innovative solutions to fund important journalism.

⁷ R Murdoch, Speech to the American Society of Newspaper Editors, Washington DC, 14 April 2005 <https://www.theguardian.com/media/2005/apr/14/citynews.newmedia>

⁸ M Mandel, Progressive Policy Institute, The Declining Cost of Advertising: Policy Implications, https://www.progressivepolicy.org/wp-content/uploads/2019/07/Advertising2019_Mandel.pdf

Secondly, there is a misconception that Meta should pay publishers for the news links on our services because publisher content “appears” on Facebook without any control by or benefit to publishers. This is not the case. Facebook is a voluntary, opt-in service for publishers. News links appear on Facebook either because publishers post it directly themselves or because people share it. Publishers can exert control over what content is shared on our services by setting up a Page, posting links to content, enabling third party sharing of their content by users, or using Facebook plugins on their owned and operated websites. Above and beyond free distribution, we have also built customised tools to enable publishers to monetise their content and understand their audience. Meta also invests in training programs for publishers and enters into commercial agreements to pay publishers to publish premium content on our platform (and can then be used on other services).

Thirdly, there is a misconception that Meta should pay publishers for organic content on Facebook because there is a value imbalance that favours Meta, particularly in Feed. This is not supported by any independent, economic evidence or empirical analysis. If all factors that contribute to a value exchange assessment are quantified and objectively analysed, the picture is likely to be very different. This is demonstrated by changes that we made to our Feed’s ranking algorithm in January 2018 to prioritise user-created content.⁹ These changes had the effect of reducing audience exposure to public content from all Pages, including news. Notwithstanding this reduction in engagement with news links, the past several years have seen an increase in people engaging on our services and increased revenues. This clearly suggests both that news is highly substitutable with other content for our users (*i.e.*, if there is less news, they will engage with other content) and that news does not drive significant long term value for our business.¹⁰

The value Meta drives to publishers

Publishers derive material commercial value from Facebook driving traffic to their owned and operated websites, and from the monetisation opportunities we provide for the news links and content they choose to share. This includes free publication and opportunities for potential distribution, customised commercialisation and innovation products, new commercial deals for premium content, and a variety of non-monetary data insights and other programs, like our support for Accelerator programs. We have set out a summary of these opportunities below.

⁹ Facebook Newsroom Bringing People Closer Together (11 January 2018), <https://www.facebook.com/business/news/news-feed-fyi-bringing-people-closer-together>

¹⁰ Facebook, Q4 2018 Quarterly Earnings Presentation, https://s21.q4cdn.com/399680738/files/doc_financials/2018/Q4/Q4-2018-Earnings-Presentation.pdf

- **Publication and potential distribution on Facebook.** The Facebook platform allows news publishers to publish, distribute, monetise and interact with viewers of their content at no cost to publishers and consistent with their publishing preferences, via Facebook’s business tools. This enables publishers to direct users to their websites where they can advertise directly to those users and monetise the traffic provided by Facebook. It also enables publishers to generate reader revenue through their own paywalls and other engagements with their customers, on their terms. This provides substantial value to publishers – in 2020 alone, Facebook sent around 180 billion clicks to news publishers around the world, worth approximately US\$9 billion.

As an opt-in platform, publishers choose to place their news links directly on Facebook via their Facebook Pages. This opportunity exists for all businesses that wish to share on Facebook, and is subject to complying with the Facebook terms of service. Facebook has built its services to respect the monetisation and data flows applied by the publisher to their content. Facebook doesn’t require publishers to change their paywall policies, or dictate to them what happens once a user clicks on a link. Publishers can remove any content that they previously posted on the Facebook platform at any time. If publishers no longer want to enable other features such as, Like, Instant Articles or the Share to Facebook plugin, they are free to disable their participation. Publishers also have the ability, through Facebook’s reporting tools, to request removal of any infringing content posted by third parties. For non-infringing news content, Facebook honours publisher’s choices about whether to allow third parties to render news content, as expressed by the publisher's use of generally established coding tools, such as meta tags.

To further assist publishers, we launched the Meta Journalism project (formerly Facebook Journalism Project) in 2017, and have invested in programs and products across the news industry since then. Through these efforts, we have incorporated publisher feedback into the development processes for:

1. **In Stream Ads:** Publishers can sign up for the insertion of In Stream Ads (formerly known as ad breaks) into their video content and receive a majority share of the ad revenue generated.
2. **Instant Articles:** Publishers can distribute articles on the Facebook platform via our “Instant Articles” product, which allows various types of ads to be included in the articles. These include (i) ads sold directly by the publishers’ sales team for which the publisher keeps 100% of total ad revenue, and (ii) use of Facebook’s Audience Network product to monetise

any impressions that are not directly sold by the publisher. There are currently around 35,000 Facebook pages that use Instant Articles, and 65 of the top 100 most-clicked web domains on Facebook use Instant Articles.

3. **Branded content:** Publishers can partner with advertisers to create and post branded content on their Facebook pages. Advertisers directly pay publishers for such content and publishers retain 100% of revenue generated. While the partnerships are between advertisers and publishers, Facebook's tools help publishers connect with interested advertisers.
 4. **Sharing data and insights:** We provide many different tools which can be used by news publishers to gather data and insights on the performance of their posts and advertising campaigns -- and support their operations. We do not charge for this data. For example, we currently provide the following insights and tools:
 - a. Page and domain insights (Facebook Pages product)
 - b. Facebook Audience Insights (Facebook Pages product)
 - c. Facebook Performance Insights (Videos)
 - d. Facebook Stories Insights (Facebook Stories product)
 - e. Facebook Analytics Dashboard (Facebook Pages running ads)
 - f. Monetization Manager
 - g. Reference File Insights in Rights Manager
 - h. Brand Collabs Manager
 - i. Business Manager
 - j. Creator Studio
 - k. Metrics for Boosted Posts
- **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 a range of commercial deals with publishers to support innovative content and technology projects 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.

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. For example, in 2019 we hosted the ANZ Reader Revenue Program to help publishers increase revenue through membership and

subscription projects.¹¹ In particular, The Spinoff has credited the programme with transforming its reader revenue approach and results and NZME has generated significant lifetime customer value through employing the strategies designed in this programme to their successful subscription model. BusinessDesk reported Duncan Greive, founder and managing editor of The Spinoff, as saying *“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”*.¹²

During the height of COVID-19 lockdowns, Meta also made grants to local New Zealand publishers who participated in the Reader Revenue Program to contribute to easing financial challenges in those unprecedented and uncertain times.¹³

Meta is continuing to make investments in the New Zealand news ecosystem to support greater diversity and plurality of digitally enabled publishers. In November 2021, Meta committed to a new set of investments.¹⁴ The multi-million dollar investment from the Meta Journalism Project includes:

- 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) – this will bring 13 publishers from Māori, regional, digital and culturally diverse publications together;¹⁵
- establishing a Meta Aotearoa News Innovation Advisory Group, in partnership with the independent NGO the International Center for Journalists, made up of a group of five industry experts, with diverse experience across New Zealand’s media industry to advise us on the Accelerator and Grand Fund; and
- dedicated training for New Zealand publishers on growing and engaging digital audiences through a Facebook News Day hosted virtually on 26 November 2021.

¹¹ Meta Journalism Project, Australian and Kiwi Publishers Grow Reader Revenue With the Facebook Accelerator (16 January 2020), <https://www.facebook.com/journalismproject/accelerator-australia-new-zealand-reader-revenue>

¹² BusinessDesk, The Spinoff: From dark days to Daylight (20 April 2021), <https://businessdesk.co.nz/article/media/the-spinoff-from-dark-days-to-daylight>

¹³ Meta Journalism Project, The COVID-19 Australian News Relief Fund Program (15 July 2020), <https://www.facebook.com/journalismproject/programs/grants/coronavirus-australian-relief-fund>

¹⁴ Facebook, A commitment to support the sustainability of New Zealand newsrooms (3 November 2021), <https://aotearoanz.fb.com/post/a-commitment-to-support-the-sustainability-of-new-zealand-newsrooms/>

¹⁵ <https://www.facebook.com/journalismproject>

The NZCC should assess fully the likely impact of the proposed conduct where it will have the effect - which is in the production and supply of news content

Market definition should allow the key impact on competition to be isolated and measured

Meta supports the NZCC's recognition that the competitive effects of the Application must be assessed within relevant markets (which have not been identified by NPA), but considers the key impact on competition of the proposed conduct is not those the NZCC has identified in *NZME/Fairfax*, nor those identified by the ACCC's DPI Report, which are in any event, inappropriate to simply import into the New Zealand media landscape.

Rather, any material reduction in competition between news publishers – as is necessarily part of the proposed conduct – can be expected to result in a reduction in the creation and distribution of news content by publishers. It can also be expected to reduce the level of diversity, quality, innovation and ultimately choice for New Zealand consumers. Given the importance of news as a public good, these are very significant potential harms.

Any assessment of relevant markets should necessarily include examination of these potential impacts and allow for them to be isolated and measured, regardless of whether such market definition is consistent with the markets identified in *NZME/Fairfax*.¹⁶ A rigorous assessment of the potential detriments is critical to analysis of the Application.

There is no market for news referral services or user data

In outlining potential market definition issues, the SOPI refers expressly to statements by the ACCC in its Final Report in the Digital Platforms Inquiry about news referral services, and indicates that the NZCC will consider the nature of these services. The SOPI also states that the NZCC will explore whether there are any other relevant markets, including a possible market for the acquisition of user data.¹⁷

Notwithstanding the tentative views expressed by the ACCC in its Final Report in the Digital Platforms Inquiry, Meta considers that there is no distinct and economically relevant market for the supply of news referral services to news publishers and on any conventional analysis, such a characterisation is flawed for two key reasons:

¹⁶ Commerce Commission *NZME Limited and Fairfax New Zealand Limited* (2 May 2017) at [285]; Commerce Commission *Statement of Preliminary Issues - News Publishers' Association: Application seeking Authorisation for Collective Bargaining* (21 December 2021) at [26] to [29].

¹⁷ Commerce Commission *Statement of Preliminary Issues - News Publishers' Association: Application seeking Authorisation for Collective Bargaining* (21 December 2021) at [28] and [29].

- A fundamental concern with any hypothetical “news referral market” is that it is artificially narrow and does not encompass the range of different ways that news publishers distribute, and consumers access, news. For example, readers consume news directly through publisher apps and websites. They also access news via other online means such as email newsletters and alerts, mobile notifications (including those provided by news publishers), newsreader sites and news aggregator apps, as well as through offline channels.¹⁸ This hypothetical market therefore fails to encompass the range of close substitutes for news media publishers and consumers.
- Identification of a hypothetical market for the supply of “news referral” services also fails to reflect the commercial reality of the services provided by Meta or the way that people engage either with Facebook or with news links. People come to Facebook to discover and engage with a wide range of content. Meta does not compete with anyone to refer users to news media websites any more than it competes to refer users to the websites of banks, restaurants or airlines. To the contrary, all online services, including platforms providing social networking services, have a commercial incentive to keep users engaged on their own platforms.

Further details about the processes that may lead to users navigating to a news media website – and analysis as to why these processes do not involve participation in a “news referral market” – are set out in the expert report by Professor Catherine Tucker (Sloan Distinguished Professor of Management, Marketing school, MIT Sloan) which is available [here](#).

The evidence does not support the conclusion that there is a relevant market for the acquisition of user data – there is no field of rivalry in relation to the acquisition (or supply) of user data such that, on any meaningful analysis, it could be viewed as a separate market in which Meta participates.

Like many online services, Meta obtains certain information about users’ interactions with its services in order to provide its services. However, Meta does not compete to acquire user data nor does it compete to supply user data to other parties. In addition, other parties do not compete with each other to acquire any user data that Meta may have. For example, to create an account on one of the services that Meta provides, a person will likely need to use an email address – in a similar fashion to other apps and

¹⁸ The issues associated with defining a news referral services market are explained in full in the following report, noting that these issues would need to be analysed with reference to the position in New Zealand: Professor Catherine Tucker *Submission to the ACCC’s Digital Platforms Inquiry: News Referrals* (24 April 2019), accessible at: <https://www.accc.gov.au/system/files/Facebook%20Australia%20Submission%203%20%28April%202019%29.pdf>.

news websites. A news publisher can understand that a person is interested in travel or fashion based on the articles they click on or the newsletters they sign up to receive, in a similar way to how Meta can identify this based on the Pages a person chooses to follow. Meta simply does not compete to acquire or provide this data.

Accordingly, defining any separate market for the acquisition of user data would both depart from established competition principles and serve no analytic purpose in assessing the Application – relevantly, in assessing the scope and impact of the Application, it is simply not a service that Meta supplies.

To the extent that the NZCC wishes to focus on the acquisition of other data by news publishers (e.g. certain second and third party data), this data is by no means unique. It is widely available, and is also non-rivalrous. Multiple parties can obtain the same data, and therefore do not in any meaningful sense compete for it. In fact, as set out above, Meta already provides many different data insights tools free-of-charge to publishers, so it is unclear what additional benefit the Application seeks to obtain.

There is also no separate market for social media or display advertising

The SOPI also refers to NZCC’s decision in NZME/Fairfax where it identified a broad market for the supply of digital (or online) advertising services, and the Digital Platforms Inquiry Final Report in which the ACCC considered a market for the supply of display advertising.

The evidence does not support the conclusion that there is a separate market for display advertising. Meta competes vigorously with both offline advertising channels and a range of online platforms that offer search and display advertising services. Many of these channels are rapidly developing, and are experiencing significant growth and convergence (including various online, broadcaster video on demand (BVOD) and outdoor advertising channels)¹⁹ such that competitive distinctions between online and offline, and between types of online channels cannot be meaningfully made.²⁰

Accordingly, it would not be appropriate to adopt any approach to the delineation of advertising markets – particularly not one from an entirely different context which has

¹⁹ See for example: <https://www.adnews.com.au/news/ooh-predictions-2020-growth-premium-product-and-trust/>; <https://thoughtleadership.oaaa.org/10-years-of-ooh-growth-no-end-in-sight/>; <https://magnaglobal.com/global-advertising-market-reaches-new-heights-and-exceeds-pre-covid-levels/>

²⁰ The expert report by Professor Catherine Tucker “Competition in the Digital Advertising Market”, provides detailed reasons and evidence as to why any historic delineation between “search ads” and “display ads” is no longer competitively meaningful and reflects a long-gone era: <https://gaidigitalreport.com/wp-content/uploads/2020/11/Tucker-Competition-in-the-Digital-Advertising-Market.pdf>

been strongly contested - without undertaking a full and appropriately rigorous analysis of competitive choices in New Zealand.

Meta has similar concerns in relation to the SOPI's characterisation of social media services. Meta considers that on any conventional competition assessment, there is no relevant market comprising supply of "social media services" - that is artificially narrow. Meta competes vigorously with a very wide range of services, including other websites, apps, platforms, games and entertainment services - as well as a wide range of offline products and services - to attract and retain user attention. These products have a wide range of different characteristics, functionalities, features and tools for users. But each competes strongly for user attention and engagement.

In any event, it is unclear what analytic purpose either such market definition would serve in relation to the NZCC's assessment of the Application and how such services would be impacted by the Application at issue.

The impacts on competition and any potential benefits should be assessed against a realistic counterfactual reflecting Meta's engagement and investment

While the counterfactual (or counterfactuals) submitted in the Application is redacted (and Meta therefore cannot comment directly on NPA's views), any realistic counterfactual must necessarily start from a baseline of Meta's engagement with individual news publishers in New Zealand in a meaningful and constructive manner and our significant investment in the New Zealand ecosystem, as described above.

Over several years, Meta has partnered with news publishers in New Zealand to support them to grow their audiences and increase the value they receive from our services. We have steadily increased our investment, tailored for the differing nature of Kiwi publishers and our investment approach. Meta has been providing New Zealand publishers with training to assist them in optimising the use of our services to grow their audience and generate greater customer insights, onboarded them to customised tools to build revenue and grow customer lifetime value and is investing millions of dollars in funding to a wide range of news publishers.

To cater to the diverse needs of news publishers in the New Zealand market, Meta has designed its long-term investments to be adaptable to publishers of different sizes and business models - and to support a sustainable, local news ecosystem.

For New Zealand newsrooms with a reader revenue model, such as The Spinoff, Newsroom and New Zealand Herald, Meta has invested in projects and programs to boost total customer lifetime value through the publishers' acquisition and retention of paying subscribers and members. To cater for broadcasters, our video clip deals are structured as a minimum guarantee against future advertising revenue on our platform for catch-up news clips that have recently been broadcast on TV.

Meta's recent four-part investment in New Zealand has been crafted to support media plurality and diversity and the varied needs of New Zealand publishers. Facebook News Day provided expert training to 38 small, regional newsrooms, while Meta's 2022 New Zealand Audience Development Accelerator, which is focused on digital transformation including advertising and subscription models, allows for the ability to provide one-on-one coaching and flexible funding to newsrooms, taking into consideration the size and unique needs of the individual publisher.

In addition to Accelerator programs, training and partnerships engagement, Meta is in active commercial discussions with a range of New Zealand publishers. This is the case regardless of whether or not the NZCC authorises the proposed conduct.

This is the best evidence of how Meta will continue to support and work with New Zealand publishers in the future. There is no evidence that the granting of authorisation will bring about additional benefits over and above this investment and engagement.

Meta is not an unavoidable trading partner – news publishers can reach audiences in a range of ways

The likely benefits identified in the Application include addressing perceived bargaining power imbalances which NPA asserts exist between New Zealand news publishers and digital platforms, by allowing publishers to engage in collective bargaining in order to reach more competitive outcomes. In particular, NPA submits that digital platforms are "unavoidable trading partners" that New Zealand news media companies rely on for audience and referrals.

This is not correct. Facebook is not on any measure an essential distribution channel for news publishers, and is not the sole nor even a primary gateway by which consumers access news on the internet.

Facebook is just one of the many channels that publishers can choose to distribute their content and reach new audiences. There are also a range of alternatives, including direct engagement with audience, news apps and aggregators, and the many other digital

platforms which act as a source for online news such as YouTube (owned by Google), Twitter, Snapchat, TikTok, Apple News, Viber, WeChat, Telegram, Reddit and LinkedIn and which form a ready substitute to Meta.

This is not hypothetical. There is clear evidence that New Zealand publishers can and do distribute their content through other channels, reach audiences and experience significant growth without sharing their content on Facebook.

In July 2020, Stuff chose to stop 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.²¹ Further, in December 2021, even following its choice not to voluntarily post its content on Meta services, Stuff was ranked as the fifth most visited website in New Zealand (the NZ Herald was ranked ninth).²²

This is also supported by the data. In January 2022, traffic to the Stuff, NZ Herald, ODT, The Spinoff and Scoop websites (NPA websites) comprised on average 69.41% from visitors navigating directly to those websites, 19% from people searching for keywords, 7.05% from social media networks combined (including Facebook, Twitter, TikTok and others), 3.63% from other websites; and 0.91% from email, advertising and other sources.²³

The assertions contained in the Application in relation to an alleged bargaining power imbalance also appear to ignore – and are difficult to reconcile with – Meta's commitment to the news media ecosystem in New Zealand, and the substantial tools and benefits that Meta provides to publishers, all free of charge.

Any assessment of the Application should be based on evidence of benefits and detriments in New Zealand

In addressing many key issues, the Application appears to rely on Australian evidence, without demonstrating any similar application in New Zealand. In some cases, this evidence is also highly contestable.

²¹ NPR, This News Publisher Quit Facebook. Readership Went Up (2 April 2021), <https://www.npr.org/2021/04/02/983211972/this-news-publisher-quit-facebook-readership-went-up>

²² Stuff.co.nz, Stuff rejoins Nielsen rankings in top media position (17 December 2021), <https://www.stuff.co.nz/business/127321189/stuff-rejoins-nielsen-rankings-in-top-media-position>

²³ This analysis is based on SimilarWeb data regarding the marketing channels used by the NZ Herald, Stuff, The Spinoff, ODT, and Scoop websites on desktop, in January 2022.

In particular, the Application draws extensively on the ACCC's Digital Platforms Inquiry²⁴ and the ACCC's authorisation of collective bargaining with digital platforms.²⁵ However, it does not provide meaningful analysis or evidence as to the New Zealand position, or explain why and how the position in Australia is mirrored in New Zealand.

There are numerous flaws in the ACCC's findings with respect to the finding of bargaining power in Australia²⁶ and it is not supported by actual evidence of our interactions with news media businesses or the way that news media businesses distribute their content to consumers.²⁷ But, in any event, the competitive landscape for media in New Zealand is distinct and the nature of the New Zealand media industry is significantly more concentrated in comparison to both Australian and international standards.

The high level of concentration in New Zealand's media was clearly recognised in the *NZME/Fairfax* decision,²⁸ in which the NZCC found that the NZME and New Zealand (Stuff) websites account for around 89% of total page views from New Zealand news websites (excluding mobile apps) and that the two companies accounted for 86% of total time spent on New Zealand news websites (excluding mobile apps).²⁹ This finding was also upheld by the High Court and Court of Appeal.³⁰ Even today there is continuing consolidation, particularly involving smaller digitally disruptive players, for example NZME's recent decision to purchase BusinessDesk.³¹

Additionally, not only does the Application involve the majority of participants in the New Zealand industry, many of them have reported strong growth across their businesses all within the COVID-19 epidemic period and despite the impact of lockdowns the Application refers to. For example, Stuff reported double-digit revenue growth in its

²⁴ ACCC *Final Report on Digital Platforms Inquiry* (2019).

²⁵ ACCC, AA1000551: *Country Press Australia* (5 August 2021); ACCC, AA1000565: *Commercial Radio Australia* (29 October 2021).

²⁶ <https://www.accc.gov.au/system/files/Facebook%20Australia%20%28March%202019%29.PDF>

²⁷ https://www.accc.gov.au/system/files/Facebook_0.pdf

²⁸ NZCC *NZME Limited and Fairfax New Zealand Limited* (2 May 2017) at [X40] and [X45].

²⁹ NZCC *NZME Limited and Fairfax New Zealand Limited* (2 May 2017) at [1523]; also see Dr Myllylahti, 'Google, Facebook and New Zealand news media: The problem of platform dependency', Auckland University of Technology, September 2018, available at: https://thepolicyobservatory.aut.ac.nz/_data/assets/pdf_file/0017/202841/google-facebook-and-new-zealand-news-media-merja-myllylahti.pdf

³⁰ *NZME and Fairfax v Commerce Commission* [2017] NZHC 3186 at [245]; *NZME, Fairfax and Stuff v Commerce Commission* [2018] NZCA, 389 at [122].

³¹ RNZ, NZME to buy specialist news website BusinessDesk (30 November 2021), <https://www.rnz.co.nz/news/business/456866/nzme-to-buy-specialist-news-website-businessdesk>

market-leading Stuff Ads self-service revenue platform in CY2021.³² NZME also reported increasing revenue and market share growth across all of its platforms.³³

Against this backdrop, consideration needs to be given to the impact of the proposed conduct which would involve the majority of participants in the already highly concentrated New Zealand news media industry. This would represent and impact a very significant majority of New Zealand news content. This is clearly a material consideration in assessing any competition impacts, and distinct from the recent collective bargaining matters in Australia to which the Applicant has referred. 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, and limited overlap in the products they supply.

Accordingly, the wholesale adoption of an Australian perspective, without proper consideration, is plainly not sufficient to demonstrate a likely benefit (or detriment) in New Zealand, and Meta encourages the NZCC to thoroughly examine the potential effect and detriment that the proposed conduct would involve in New Zealand specifically.

Claims that collective bargaining is needed to fund media companies to combat misinformation / malinformation are misplaced

Both the Applicant's provisional authorisation application and full authorisation application indicate that collective bargaining is necessary to contribute funding to media companies to enable them to combat misinformation and malinformation, and that digital platforms do not invest or bear any cost to address this. That is not correct. To effectively consider the probity of this claim, it is helpful to outline the significant investment Meta already makes to remove and reduce the distribution of harmful misinformation.

Meta takes a significant number of steps to combat harmful misinformation, especially in relation to misinformation on COVID-19. These fall under a three-part framework.

1. **Remove** misinformation that could cause imminent, physical harm; and we allow for appeals in instances where we may not get this right;
2. **Reduce** the spread of fact-checked misinformation; and

³² See <https://stoppress.co.nz/news/stuff-ends-2021-on-a-high/>

³³ See <http://nzx-prod-s7fsd7f98s.s3-website-ap-southeast-2.amazonaws.com/attachments/NZM/383041/359506.pdf>

3. Promote authoritative information and develop tools to **inform** our users.

This approach is supplemented by research and partnerships to ensure that we are constantly updating our efforts in response to changes in the nature of misinformation.

We are committed to working with policymakers and partners around the world to combat misinformation. We have worked constructively with Government and industry in New Zealand to both combat misinformation and to reach millions of Kiwis with authoritative health information. An example of such work includes:

- Providing significant amounts of advertising credits to Government departments and not for profits to promote vaccination and public health messaging;
- Specialist support to agencies and not for profits primarily focused on Māori and Pasifika health messaging;
- The roll-out of misinformation education campaigns in New Zealand (and the Pacific Islands) in multiple languages including Māori, Tongan, Samoan and Tok Pisin in addition to English and other languages;
- Access to our Data for Good data sets, including the Social Connectivity Indexes to Te Pūnaha Matatini to assist in their modeling work for the New Zealand Government; and
- Free and publicly available dashboards - including a specific New Zealand CrowdTangle dashboard focused on COVID-19 (which has the effect of surfacing which content is trending on social media), and vaccine hesitancy, COVID behavioural surveys and dashboards that surface categories (in near real time) vaccine acceptance rates and top barriers to vaccine acceptance.³⁴

In May 2021, we reported that since the beginning of the pandemic in March 2020 to the end of December 2020, globally Meta had removed over 14 million pieces of content that constituted misinformation related to COVID-19 that may lead to harm, such as content relating to fake preventative measures or exaggerated cures. Since these figures were released, we have updated our global statistics on misinformation. In August 2021, we reported that since the beginning of the pandemic, we have removed more than 20 million pieces of content from Facebook and Instagram globally for violating our policies on COVID-19 related misinformation. We have also displayed warning labels on more than 190 million pieces of COVID-related content that our third-party fact checking-partners rated as false, partly false, altered or missing context, to limit the spread of COVID-19 and

³⁴ <https://covidbehaviors.org/> and <https://dataforgood.facebook.com/covid-survey/regional?level=0>

vaccine misinformation.³⁵

We have made a COVID-19 Information Centre available around the world to promote authoritative information to Facebook users. More than 2 billion people globally, including over 6.2 million people in Australia visited the COVID-19 Information Centre during 2020.³⁶

Our approach to misinformation is outlined in more detail below.

Remove

Meta removes misinformation that violates our Community Standards and can cause imminent, physical harm. These policies are continuously updated to reflect the latest research, and keep pace with changes happening online and offline around the world.

We define misinformation as claims that are misleading or false, and we will remove any content that violates our policies that relate to misinformation, these include:

- **Misinformation & Harm policy.** We have had a policy on Misinformation and Harm since 2018.

We work with experts around the world - in particular, the World Health Organisation - to identify COVID-related claims that could cause imminent, physical harm. In December 2020, we expanded our policy to cover false claims about COVID vaccines, and in January 2021 we expanded our Misinformation and Harm policy to include claims about vaccines generally.³⁷ In October 2021, we expanded our policy to include a range of false claims about COVID-19 vaccines and children.³⁸

- **Election-related misinformation that may constitute voter fraud and/or interference.** Under our policies, we prohibit misrepresentation of the dates, locations, times, and methods of voting or voter registration (for example: claims

³⁵ Meta, *Community Standards Enforcement Report Q2 2021*, <https://transparency.fb.com/data/community-standards-enforcement/>

³⁶ J Machin, 'Facebook's response to Australia's disinformation and misinformation industry code', *Facebook Australia Blog*, 21 May 2021, <https://australia.fb.com/post/facebooks-response-to-australias-disinformation-and-misinformation-industry-code/>

³⁷ K Jin, 'Keeping people safe and informed about the coronavirus', *Meta Newsroom*, 18 December 2020, <https://about.fb.com/news/2020/12/coronavirus/#removing-covid-vaccine-misinformation>; G Rosen, 'An update on our work to keep people informed and limit misinformation about COVID-19', *Meta Newsroom*, 16 April 2020, <https://about.fb.com/news/2020/04/covid-19-misinfo-update/#removing-more-false-claims>

³⁸ K Jin, 'Supporting covid-19 vaccination efforts for children', *Meta Newsroom*, 29 October 2021, <https://about.fb.com/news/2021/10/supporting-covid-19-vaccine-children/>

that you can vote using an online app); misrepresentations of who can vote, how to vote, qualifications for voting and whether a vote will be counted; or misrepresentation of who can vote, qualifications for voting, whether a vote will be counted, and what information or materials must be provided in order to vote. We also do not allow statements that advocate, provide instructions, or show explicit intent to illegally participate in a voting process.

Voting is essential to democracy, which is why we take a firm approach on misrepresentations and misinformation that could result in voter fraud or interference.

- **Violence-Inducing Conspiracy Theory policy.** Our dangerous organisations policy captures content relating to “violence-inducing conspiracy theories”. As of September 2021, we identified and removed over 1,013 militarised social movements on our platforms and in total, removed about 7,900 Pages, 31,900 groups, 830 events, 105,000 Facebook profiles and 40,800 Instagram accounts.
- **Manipulated media, also known as “deepfakes”, in line with our Manipulated Media policy.** After consulting with more than 50 global experts with technical, policy, media, legal, civic and academic backgrounds, we announced in 2020 that we would remove manipulated media if: (1) it has been edited or synthesised – beyond adjustments for clarity or quality – in ways that aren’t apparent to an average person and would likely mislead someone into thinking that a subject of the video said words that they did not actually say; and (2) it is the product of artificial intelligence or machine learning that merges, replaces or superimposes content onto a video, making it appear to be authentic.³⁹

Reduce

For content that does not violate our Community Standards but is still problematic or otherwise low-quality, we reduce its distribution. Our initiatives to reduce the distribution of misinformation include:

- **Third-party fact-checking program.** We have commercial arrangements with independent third-party fact-checking organisations for them to review and rate the accuracy of posts on Facebook and Instagram. In New Zealand, we partner with the Australian Associated Press (who employ New Zealand-based trained journalists to undertake their work) and Agence France Presse, both certified by

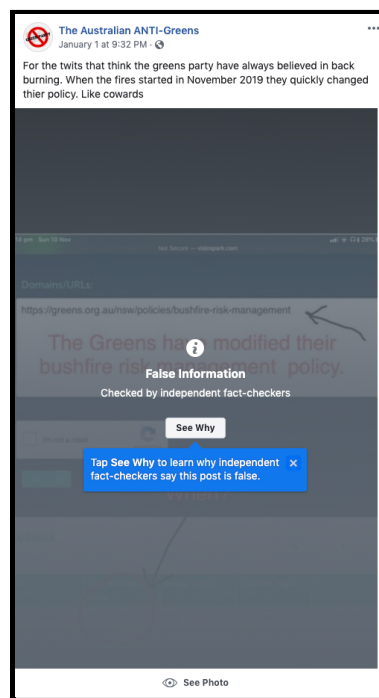
³⁹ M Bickert, Enforcing Against Manipulated Media, *Meta Newsroom*, 6 January 2020, <https://about.fb.com/news/2020/01/enforcingagainst-manipulated-media/>

the nonpartisan International FactChecking Network. All fact-checks by these partners are publicly available on their websites.⁴⁰

Since 2016, Meta has contributed more than \$84 million globally to support our fact-checking efforts.⁴¹ This includes direct support of fact-checkers for their work on our platforms, as well as industry initiatives like sponsorships, fellowships, and grant programs. We now work with over 80 fact-checking partners around the world covering more than 60 languages.

- **Warning labels.** Once a third-party fact-checking partner rates a post as ‘false’, we apply a warning label or notice and show a debunking article from the fact checker, shown in Figure 12 below. It is not possible to see the content without clicking past the warning label. When people see these warning labels, 95 per cent of the time they do not go on to view the original content.

Figure 12: Misinformation warning label



⁴⁰ Agence France Presse Australia, Fact Check, <https://factcheck.afp.com/afp-australia>; Australian Associated Press; AAP Fact Check, <https://www.aap.com.au/category/factcheck>

⁴¹ C Alexander, 'Facebook launches accelerator challenge for global fact-checkers to expand reach of reliable information', *Facebook Journalism Project*, 26 August 2021, <https://www.facebook.com/journalismproject/accelerator-fact-checkers>

- **Ensuring that fewer people see false information.** Once a fact-checker rates a piece of content as “false”, “partly false” or “altered”, it appears lower in Feed on Facebook. On Instagram, it gets filtered out of Explore and is featured less prominently in feed and stories. This significantly reduces the number of people who see it. We also reject ads with content that has been rated by fact-checkers.
- **Searching for content that makes claims debunked by our fact-checking partners, to apply the same treatments.** Based on one factcheck, our technology is able to identify duplicates of debunked stories and limit the distribution of similar posts. In April 2020 alone, we applied the label and reduced the distribution of more than 50 million posts worldwide, based on more than 7,500 fact-checks.⁴²
- **Taking action on Pages, Groups, accounts, or websites found to repeatedly share misinformation, including removing them from recommendations.** When Pages, Groups or websites repeatedly share content that’s been debunked by fact-checking partners, they will see their overall distribution reduced, and will lose the ability to advertise or monetise within a given time period. We will also let people know if they’re about to join a group that has Community Standards violations, so they can make a more informed decision before joining.⁴³ If they continue to share misinformation, the Page or Group is removed in its entirety. This includes Pages operated by public figures.

Inform

In addition to removing harmful misinformation and reducing the distribution of fact checked misinformation, Meta also works to connect people with up-to-date, authoritative information, this includes:

- **Promoting authoritative information.** As noted above, we’ve worked with the World Health Organisation to create a COVID-19 Information Centre with verified, authoritative information about COVID-19.⁴⁴ This is a dedicated space in the Facebook app where content provided by trusted sources is prominently displayed and significantly increases the reach of public health messaging. In New Zealand the Centre includes the Ministry of Health, Unite Against COVID-19, the Ministry

⁴² G Rosen, An Update on Our Work to Keep People Informed and Limit Misinformation About COVID-19, *Meta Newsroom*, updated 12 May 2020, <https://about.fb.com/news/2020/04/covid-19-misinfo-update/>,

⁴³ T Alison, ‘Changes to keep Facebook Groups safe’, *Meta Newsroom*, 17 March 2021, <https://about.fb.com/news/2021/03/changes-to-keep-facebook-groups-safe/>

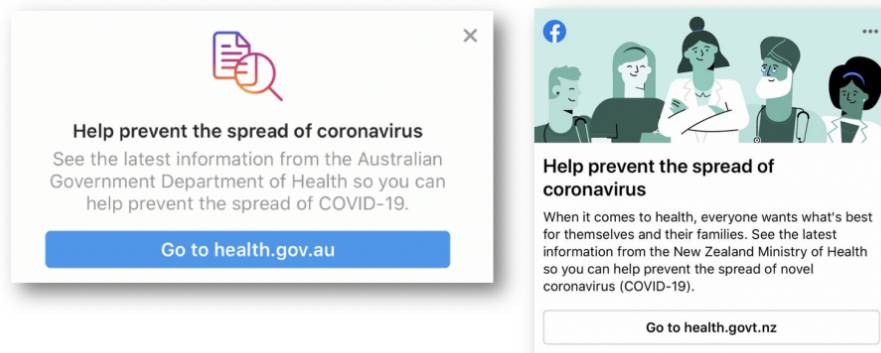
⁴⁴ <https://about.fb.com/news/2020/12/coronavirus/#latest>

for Pacific Peoples in addition to the WHO and UNICEF.

We have also announced US\$1 million for a grant program with the International Fact Checking Network, to support organisations to combat climate misinformation.⁴⁵

- **Providing free advertising credits to Government departments.** To support the rollout of the COVID-19 vaccine in New Zealand, Meta has given a significant number of Facebook advertising credits to Government agencies and NGOs. This helps to ensure the promotion of authoritative vaccine information.
- **Using in-product tools to help authorities communicate time critical information on key COVID-19 related topics.** We have displayed prompts, examples shown in Figure 13, on Facebook and Instagram to direct users to official sources of information, including the New Zealand Government and the World Health Organisation. These have been served to every Facebook and Instagram user in New Zealand multiple times, either in their Feeds or when they search for coronavirus-related terms.

Figure 13: COVID-19 in-product prompts



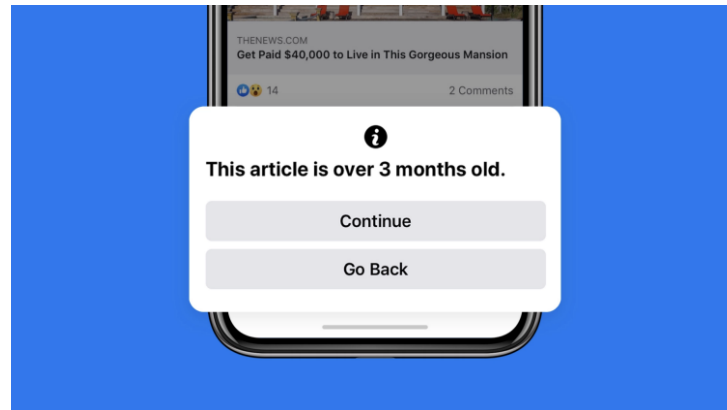
- **Providing contextual information around posts that users see from public Pages.** We have developed a number of other labels and signals to indicate the trustworthiness of posts they see on Facebook. These include the context button, which provides information about the sources of articles in Feed;⁴⁶ the breaking

⁴⁵ Meta, 'Tackling climate change together', *Meta Newsroom*, 16 September 2021, <https://about.fb.com/news/2021/09/tackling-climate-change-together/>

⁴⁶ J Smith, A Leavitt & G Jackson, 'Designing New Ways to Give Context to Stories', *Meta Newsroom*, 8 April 2018, <https://about.fb.com/news/2018/04/inside-feed-article-context/>

news tag, to help people easily identify timely news or urgent stories;⁴⁷ and a notification screen that lets people know when news articles they are about to share are more than 90 days old, shown in Figure 14 below.⁴⁸

Figure 14: Contextual Information Label



Partnerships and research

Combating misinformation requires cross-sector collaboration. We continue to partner with industry, government, academics and civil society organisations to ensure the measures we take to address misinformation are based on expert information, and have the most effective impact, these initiatives include:

- Maintaining a direct reporting channel for misinformation content of concern with NetSafe New Zealand;
- Funding a research initiative at the University of Canterbury focused on misinformation and polarisation;
- In 2020, we collaborated with NetSafe and funded their Your News Bulletin⁴⁹ campaign, which launched in August in the lead up to the election and reached more than 1.6 million adult New Zealanders. To spark engagement and conversations, it took a unique approach to the issue of misinformation and provided a 'trainer' website and educational resources to help people to better identify and prevent the spread of misinformation. The campaign used uniquely Kiwi humour to address a serious issue which added to its reach and efficacy and

⁴⁷ J Rhyu, 'Enabling Publishers to Label Breaking News on Facebook', *Facebook for Journalism*, 6 April 2020, <https://www.facebook.com/journalismproject/facebook-breaking-news-label>

⁴⁸ J Hegeman, 'Providing people with additional context about content that they share', *Meta Newsroom*, 25 June 2020, <https://about.fb.com/news/2020/06/more-context-for-news-articles-and-other-content/>

⁴⁹ See: <https://www.facebook.com/YourNewsBulletinNZ/>

has since won its creators several industry awards. A wide reaching communications approach ensured the campaign reached many audiences across different age groups and demographics. This included print, TV, radio and social media channels.

Conclusion

Against this background, we suggest that the Application is not necessary and we welcome the opportunity to continue to collaborate with New Zealand publishers to support them to connect with new audiences and help support their path to long term sustainable digital businesses, and to invest more broadly in the New Zealand ecosystem. Please do not hesitate to contact us if you require any further information regarding our submission, and we look forward to further engagement as the process continues.