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NPA CROSS-SUBMISSION IN RELATION TO ITS APPLICATION FOR AUTHORISATION FOR COLLECTIVE BARGAINING WITH GOOGLE AND FACEBOOK

15 DECEMBER 2021

EXECUTIVE SUMMARY

1. NPA has reviewed the submissions on its application for authorisation of collective bargaining (the "**Arrangement**") with Google and Meta (referred to as "Facebook") (together the "**Digital Platforms**").
2. NPA considers that the submissions of Google and Facebook:
 - (a) underplay the way in which their platforms benefit from access to news content; and
 - (b) reflect attempts to avoid and delay any changes to the status quo in which the Digital Platforms benefit from a significant imbalance in bargaining power in their dealings with New Zealand news publishers. The Digital Platforms' submissions refer to their voluntary (and often token) funding / education initiatives, however, those initiatives are no substitute for the ability of news publishers to be able to engage in meaningful negotiations with the Digital Platforms for fair and commercial remuneration (as has occurred in Australia).
3. NPA considers that the submissions from TVNZ, RNZ, and Discovery (the "**Broadcasters**") do not adequately address that those Broadcasters:
 - (a) have very different business models to the news publishers that fall within the scope of NPA's application to the Commission; and
 - (b) have the ability (if they consider helpful) to seek Commission approval for their own collective bargaining arrangement. That is similar to what has occurred in Australia whereby groups of news publishers and radio broadcasters each filed separate applications with the Australian Competition and Consumer Commission ("**ACCC**") for authorisation of collective bargaining with Google and Facebook. NPA's application does not preclude the Broadcasters from taking any such steps of their own to address bargaining imbalances in their dealings with the Digital Platforms.
4. NPA considers that the addition of Broadcasters to the Arrangement, given they have very different business models to publishers, would add complexity to both the authorisation application and any subsequent negotiations with the Digital Platforms. Therefore, NPA does not intend to amend its application to enable the Broadcasters to participate in the application made on behalf of news publishers.
5. Further details on NPA's perspective on these submissions is as follows.

RESPONSE TO THE SUBMISSIONS FROM GOOGLE AND FACEBOOK

6. We have reviewed the submissions of Google and Facebook, and from our perspective those submissions reflect attempts to avoid and delay any changes to the status quo in which the Digital Platforms benefit from a significant imbalance in bargaining power in their dealings with New Zealand news publishers. In particular, the Digital Platforms suggest that "[w]holesale comparisons to Australia... are not appropriate". However, the very same issues, challenges, and imbalances of bargaining power that have been recognised in

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Australia exist for news publishers in New Zealand. The Digital Platforms' submissions do not contain any credible reasons as to why New Zealand should be regarded as having any different dynamics to Australia.

7. We also consider that the submissions from the Digital Platforms do not present a full or accurate portrayal of the relevant dynamics. In particular, the Digital Platforms' submissions:
 - (a) underplay the way in which their platforms benefit from news content;
 - (b) minimise the impact that their businesses have on news publishers; and
 - (c) overstate the ability of news publishers to choose whether or not to have their content on the Digital Platforms.

New content is valuable to the Digital Platforms

8. The suggestion that the Digital Platforms do not derive commercial value from the use of news content on their platforms is inconsistent with the findings of the ACCC in its Digital Platforms Inquiry:¹

The content produced by news media businesses is also important to digital platforms. For example, between 8 and 14 per cent of Google search results trigger a "Top Stories" result, which typically includes reports from news media websites including niche publications or blogs.... the digital platforms clearly value the news media content that they are able to display to their users.

9. Such a suggestion is also inconsistent with the fact that the Digital Platforms have agreed to make significant payments to a number of news publishers in Australia. For example, in Australia:
 - (a) News Corp is said to have struck deals to receive "significant payments";² and
 - (b) Nine has stated "it expected growth in publishing earnings before interest, tax, depreciation and amortisation to be between \$30 to \$40 million this financial year" following it reaching agreements with each of Google and Facebook for use of Nine's content on their platforms.³
10. In sum, those deals have been estimated by some "as being worth A\$100m ([USD]\$77m) annually to journalism" in Australia,⁴ and others have estimated that total value in Australia as being significantly higher again:⁵

All of the deals Facebook and Google have signed in Australia are under confidentiality agreements.

¹ (June 2019). Digital Platforms Inquiry. Final Report. ACCC. Retrieved from:

<https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>

² (17 February 2021). News Corp agrees deal with Google over payments for journalism. The Guardian. Retrieved from: <https://www.theguardian.com/media/2021/feb/17/news-corp-agrees-deal-with-google-over-payments-for-journalism>

³ (1 June 2021). Nine formalises deals with Google and Facebook. The Sydney Morning Herald. Retrieved from: <https://www.smh.com.au/business/companies/nine-formalises-deals-with-google-and-facebook-20210601-p57wxq.html>

⁴ Reuters Institute Digital News Report 2021. Retrieved from: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf

⁵ (16 March 2021). What Facebook's big deals in Australia tell us. INMA. Retrieved from: <https://www.inma.org/blogs/Digital-Platform-Initiative/post.cfm/what-facebook-s-big-deals-in-australia-tell-us>

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Yet what has leaked so far is that Google's big deals cover the range from about US\$20 million a year for Seven West Media through to US\$35 million a year for Nine Entertainment Co., and to almost double Nine's number for News Corp.

Those familiar with the deals describe the Facebook deals as being worth about half, on average, of the Google totals. Some publishers that have struck deals with both the Big Tech giants indicate the Facebook value is closer to one-third of their Google tally, while others are believed to have achieved a number closer to two-thirds of their Google agreement.

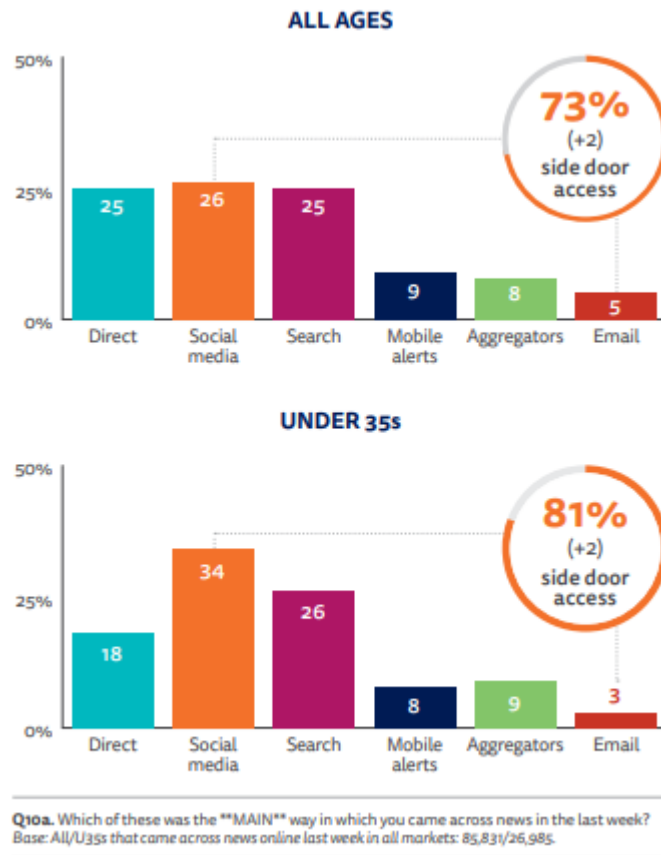
11. This demonstrates that the Digital Platforms recognise the significant value that news content delivers to their platforms when the right frameworks are in place to encourage fair negotiations for remuneration. (Those arrangements in Australia also demonstrate the significant public benefit to journalism in Australia as a result of enabling fair negotiations for remuneration, with, for example, News Corp announcing "plans to hire a further 100 editorial staff" following the conclusion of its negotiations with Google and Facebook.⁶)⁷
12. Indeed, the Digital Platforms' submissions underplay the way in which their platforms benefit from news content by making statements such as, in the case of Google, "[w]e don't run ads on Google News or the news results tab on Google Search" and, in the case of Facebook, "news does not drive significant long-term value for our business".
13. Those statements do not accurately reflect the business models of the Digital Platforms. The Digital Platforms derive enormous financial benefits from the news that they use on their sites. In particular, the news content used on those platforms draws consumers to those platforms, and that in turn leads consumers to spend time on those platforms, and engage with those platforms in ways that are heavily monetised. Irrespective of whether a Digital Platform directly monetises a particular news item (by including advertising alongside that particular news item), there is value for the Digital Platforms in using such content on their platforms. That is because:
 - (a) once a consumer is drawn to a platform, that provides the opportunity to monetise that attention through the provision of advertising. That news content draws consumers to these platforms is demonstrated by the evidence that shows that a significant proportion of individuals use search and social to access news content and, therefore, that both Google and Facebook are very important gateways for consumers to access news content. For example, the Reuters Institute Digital News Report 2021 found that 25% of people use search as their main way of accessing news content online, and 26% use social media (with those proportions increasing again for people under 35) – as set out in Figure [1] below.⁸

⁶ (10 May 2021). News Corp Formalizes Google and Facebook Deals, Announces Hiring Spree. Sydney Morning Herald. Retrieved from: <https://www.editorandpublisher.com/stories/news-corp-formalizes-google-and-facebook-deals-announces-hiring-spree.192864>

⁷ []

⁸ Reuters Institute Digital News Report 2021. Retrieved from: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf

Figure [1] – Proportion that says that each is their main way of coming across news online – all markets⁹

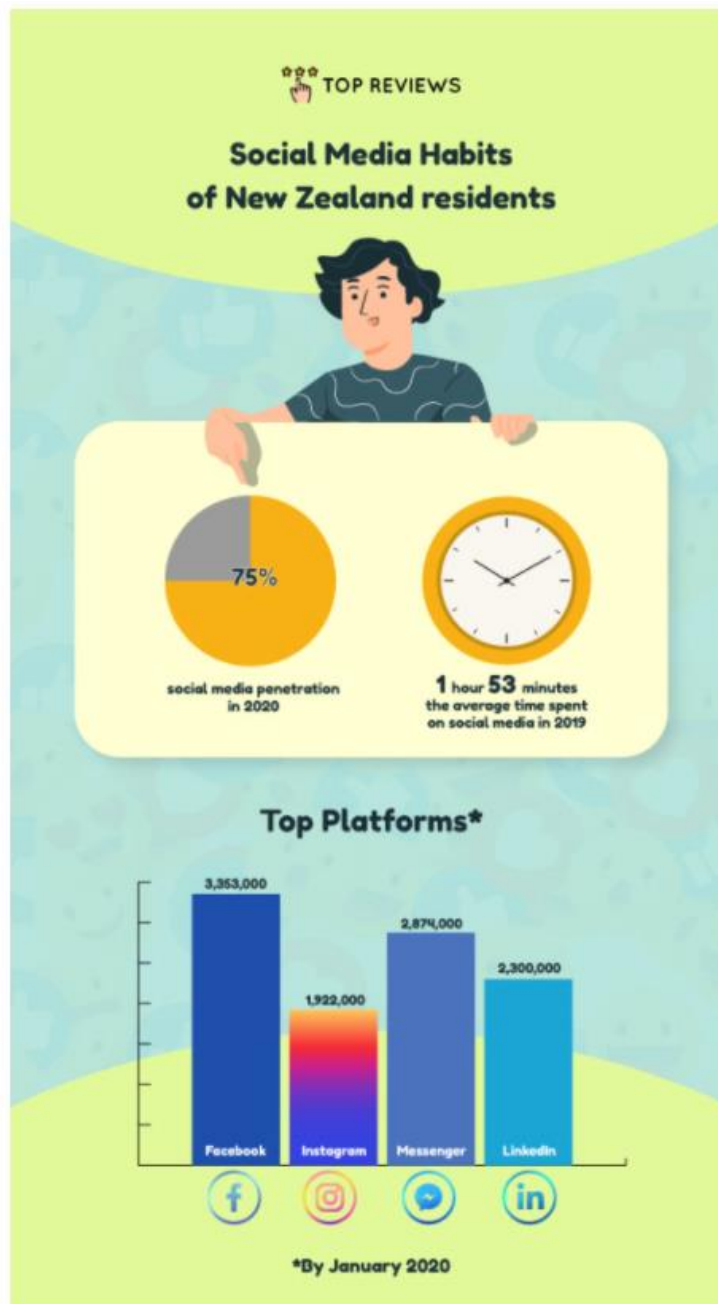


Specifically in relation to Facebook, "[a]ccording to a Reuters Institute report, up to 40% of Australians used Facebook for news between 2018 and 2020 - making it the country's most popular social media and messaging platform for news".¹⁰ New Zealanders are also prolific users of Facebook's social media platforms, see Figure [2] below, and there is no reason to suggest that they are any different to Australians in their use of Facebook to access news.

⁹ Reuters Institute Digital News Report 2021. Retrieved from: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf

¹⁰ (18 February 2021). Facebook Australia row: How Facebook became so powerful in news. BBC. Retrieved from: <https://www.bbc.com/news/world-australia-56109580>

Figure [2] – Social media habits of New Zealand residents¹¹



Facebook's own statements demonstrate that users of its platforms value access to news content:¹²

- (i) "In 2019 we surveyed people on Facebook, and found they wanted a wider range of news to see more from entertainment, sports, business, tech and other topics outside of the day's top headlines";
- (ii) "In research, people tell us that in addition to personalized news, they want to make sure they see the biggest headlines of the other day, in

¹¹ (August 2021). A Complete Guide to Social Media Statistics in New Zealand. Top Reviews. Retrieved from: <https://www.topreviews.co.nz/social-media-statistics-new-zealand/>

¹² <https://www.facebook.com/news/howitworks>

order to better understand what other people are reading and talking about".

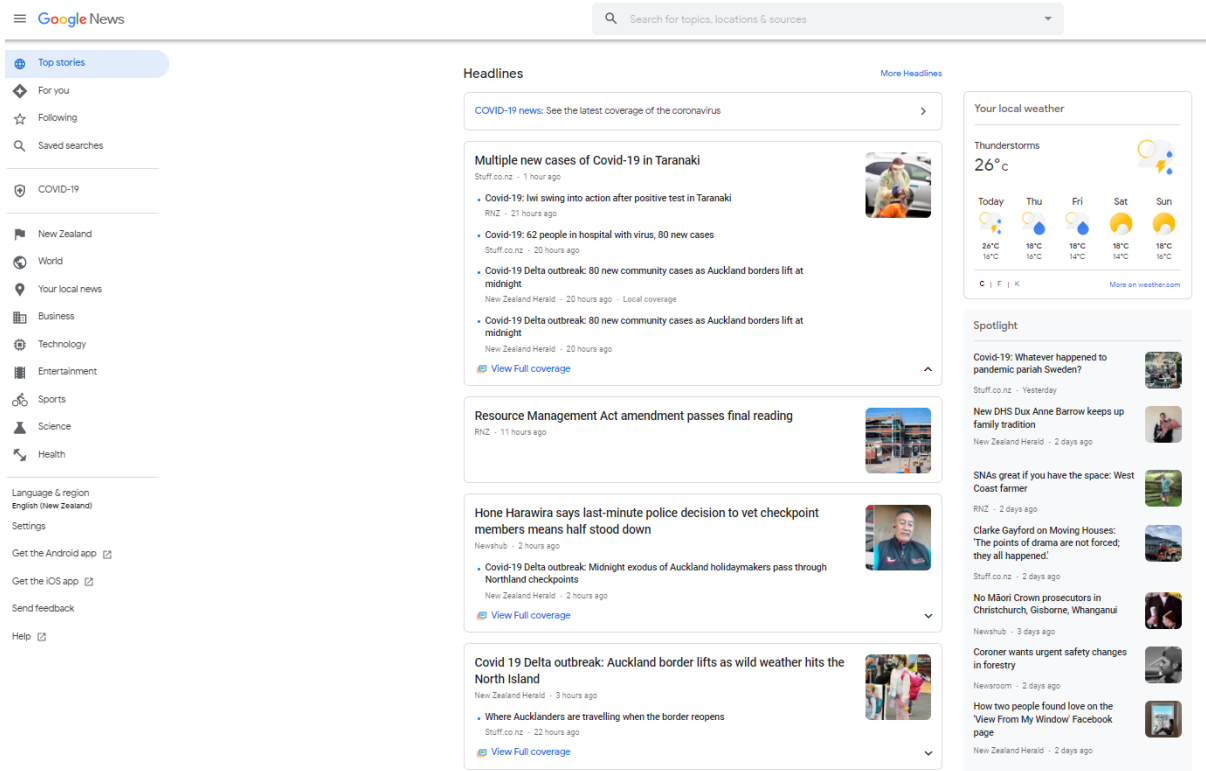
- (b) news content assists the Digital Platforms to amass valuable data about those consumers that access news on these platforms. The Digital Platforms track users' entire online experiences and activities, even once they have left the platform, through the use of cookies and other technologies. Therefore, the Digital Platforms have a strong incentive to encourage users to access content via their platform format, rather than the original source, because they are able to collect user data and advertising revenues. The data collected by Google and Facebook, including by drawing consumers to their ecosystem to access news content, provide the Digital Platforms with significant commercial value by further enhancing their ability to collect further consumer data, predict consumer behaviour and target advertisements to highly stratified audience segments (irrespective of whether those advertisements themselves are served alongside news content). This was recognised by the ACCC:¹³

The ACCC notes that the value of consumers to digital platforms comes from both the time spent on the platform (attention) and the data obtained which enables the platforms to sell targeted advertising opportunities. ... it is clear that user data forms a significant value to digital platforms (as it is highly valued by advertisers), so a significant portion of the value of consumers to digital platforms is likely to come from their user data.

14. For example, in relation to Google, while Google News is not directly monetised, it drives commercial value for Google by generating traffic to the Google platform generally and contributing data, which supports the monetisation of other Google services, notably Google Search. Google News therefore is a complementary product to further enhance Google's position in search (where it is the dominant provider by a significant margin), by drawing consumers to the Google ecosystem. Accordingly, in the absence of appropriate remuneration for news content, Google is "free-riding" by not compensating publishers for using their content, while collecting data and generating advertising revenue for Google when a user visits Google to search for that third party content. That there is this benefit to Google is demonstrated by the mere existence of Google News, which appears just like the front page of a major newspaper website (see Figure [3] below), but with content that is sourced from multiple New Zealand publishers without any production cost to Google, and without fair and commercial compensation for the producers of that content.

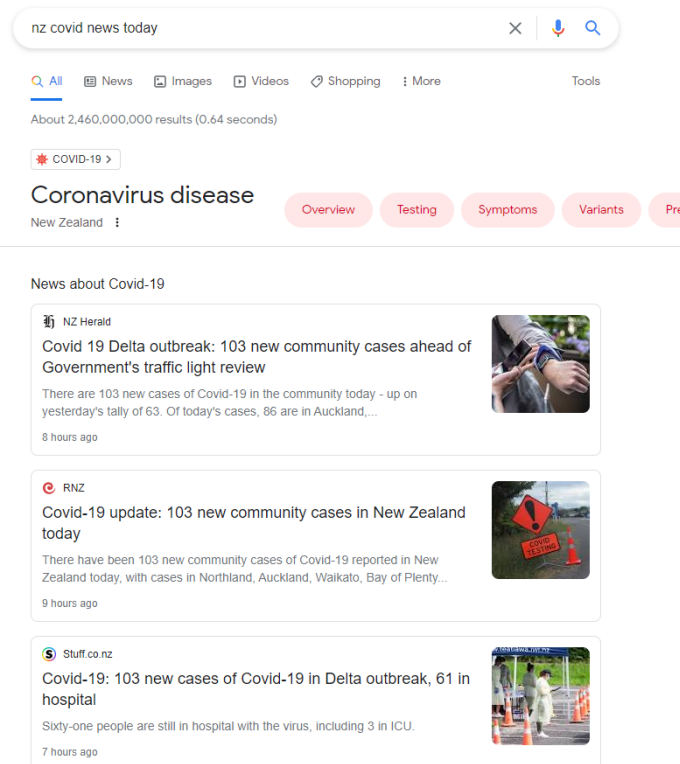
¹³ (June 2019). Digital Platforms Inquiry. Final Report. ACCC. Retrieved from: <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>

Figure [3] – Screenshot of the New Zealand Google News homepage



15. Access to news content also draws consumers to use Google Search, as Google presents snippets of news publishers' content in response to search queries – see Figure [4] below.

Figure [4] – Example of response to Google Search query



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16. This demonstrates that access to news content is a significant draw to Google's platforms. The suggestion in Google's submission that "[i]n 2019, news-related queries made up just below 1.5% of total queries on Google Search in New Zealand" is, in our view, a misleading indicator of the importance of news searches to Google's platform. Indeed, Google's own data indicates that in that same year (2019), the top five overall "trending" searches on Google in New Zealand appeared to be searches that would surface news content:¹⁴

Figure [5] – Top Five Google Trending Searches in 2019



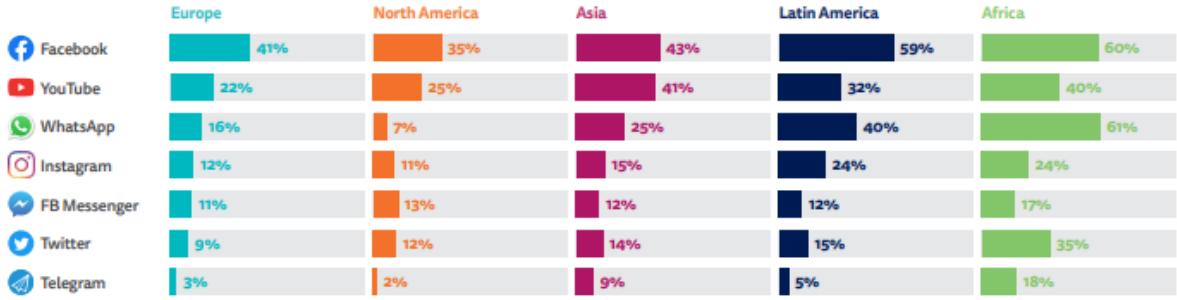
17. A hypothetical thought experiment readily demonstrates the value to Google of access to news content - namely: if two search engines were created 20 years ago that were identical, apart from the fact that one had access to news content and one did not, the one that had access to news content would clearly have become significantly more valuable than the other (given Google now has a market capitalisation of US\$1.952 trillion,¹⁵ this demonstrates the significant value that Google has derived from access to news content).
18. Similarly, in relation to Facebook, "news is one of the top reasons why people use social media, according to the Reuters report, and Facebook is the biggest social platform for it".¹⁶ Indeed, a significant proportion of users worldwide use Facebook's social media platforms to access news – see Figure [6] below.

¹⁴ <https://trends.google.co.nz/trends/yis/2019/NZ/>

¹⁵ <https://companiesmarketcap.com/alphabet-google/marketcap/>

¹⁶ (18 February 2021). Facebook Australia row: How Facebook became so powerful in news. BBC. Retrieved from: <https://www.bbc.com/news/world-australia-56109580>

Figure [6] – Proportion that used each social network for news in the last week – selected regions¹⁷



Q12B. Which, if any, of the following have you used for news in the last week? Base: Total sample in each market. Europe = 48,413, North America = 4037, Asia = 19,706, Latin America = 12,117, Africa = 6065. Note: Africa average is Kenya, South Africa and Nigeria only (English speakers in South Africa and Nigeria). We did not ask about Telegram in Colombia and Instagram in Thailand.

19. This demonstrates that Facebook's provision of access to links to journalistic content, whether that is posted to Facebook proactively by news publishers or organically by Facebook users, derives commercial benefit to Facebook by drawing consumers to the Facebook eco-system, driving time and attention on the platform. This additionally has the effect of increasing consumer engagement and further consumer generated content on the Facebook platform through comments on news links (irrespective of whether the consumers themselves click through to the news publisher's website).

There is a significant imbalance of power

20. There is also the issue that, in addition to benefitting from such news content in the ways described above, the intermediation of Google and Facebook in the news supply chain dilutes publishers' brands. In particular, Google's market dominance in search means it owns the consumer gateway to news content through search, and Facebook's market dominance in social media means it owns the consumer gateway to news content through social media. For example:

- (a) Google is performing an increasingly editorial function in the way that it presents news results, thereby supplanting the role of newspaper editors; and
- (b) for many social media users, Facebook's news feed algorithm becomes the "editor" determining what news content that they see.

21. This means that readers come to rely on the brand of the "news aggregator" (i.e. the Digital Platform) rather than on the brand of the news producer to curate news of interest to them. This has the effect of undermining publisher subscription and advertising models, in particular by enabling consumers to see headlines and snippets of news content on those Digital Platforms, rather than needing to visit news publishers' websites directly to access news content.

22. For example, in relation to Google, publishers are encouraged to provide snippets of their content in order to be presented on Google's first search page, but this in effect reduces the likelihood of users clicking through to publishers' pages to get the answer to their question, and so they stay on the Google page and can continue to be served Google's advertising. For example:

¹⁷ Reuters Institute Digital News Report 2021. Retrieved from: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf

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- (a) a survey in the US by Outsell showed that 44% of visitors to Google News scan headlines without clicking and accessing publishers' sites;¹⁸ and
- (b) a study by the European Commission ("EC") found that 47% of surveyed users browse and read headlines and snippets without accessing the whole article when accessing news via aggregators, social media or search engines.¹⁹
23. Google's provision of such headlines and snippets therefore benefits Google by drawing consumers to the Google ecosystem, but harms news publishers, as consumers have been provided with the answer to their question (through the ability to scan headlines and snippets) without leaving the Google ecosystem.
24. While Google's submission states that if news publishers "do not want to be indexed [in response to a search query], they can easily and simply opt out, either for their entire site or for only particular pages", doing so would mean that a publisher's content would not appear in search results and would, therefore, result in a significant decline in referral traffic. Therefore, a news publisher (as a matter of commercial reality) has no choice but to permit Google to scrape its content to ensure the discoverability of its news content, and the terms for doing so are dictated by Google with currently no real opportunity for bilateral negotiation for fair and commercial terms and compensation.
25. The same is true in respect of Facebook. News publishers are dependent on both Facebook and Google to drive traffic and revenue to their own news platforms, whilst also still ultimately being in a competitive relationship for advertising revenue. Effectively, New Zealand news publishers have little choice but to engage with the Digital Platforms in order to participate online. Demonstrating this:
- (a) [];
- (b) in Australia, the ACCC found that Google is "an unavoidable trading partner... having links to their websites on Google is a necessity",²⁰ and that Facebook is "a vital distribution channel for a number of media businesses."²¹
26. However, the ACCC found that the "opposite is not the case".²² That is because neither Google nor Facebook are reliant on any specific individual publisher, which means that there is no mutuality of reliance in the relationship, and means it is not possible for any individual publisher to negotiate a fair and reasonable remuneration for the value that their news content delivers to those Digital Platforms.
27. Furthermore, both Google and Facebook, through their roles as key gatekeepers for referrals, have control over which content is served, and can (and do) use that power in ways that undermine publishers' business models if they conflict with Google's objectives, as well as frequently changing the processes to determine which content is served. For example, Google has adopted approaches to search that indirectly punish publishers that seek to monetise their news content by demoting news articles in its search results that have

¹⁸ '44% of Google News Visitors Scan Headlines, Don't Click Through', Tech Crunch, 20 January 2010 .

¹⁹ News Corp Australia, Submission to the Digital Platforms Inquiry – Response to Report by Henry Ergas et al, August 2018, page 6.

²⁰ Digital Platforms Inquiry. Final Report. ACCC. Page 8.

²¹ Digital Platforms Inquiry. Final Report. ACCC. Page 8 and 9.

²² Digital Platforms Inquiry. Final Report. ACCC. Page 8 and 9.

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a "paywall" because that suits Google's own business objectives. News Corp's submission to the ACCC in Australia described this aspect of Google's business model well:²³

"While Google claims that these results are demoted because search customers prefer free content, this is an empty tautology because of course all consumers would like to receive valuable goods and services without paying for them. What really underlies Google's demotion of this content is not customer preference but Google's preference that customers and content creators be tied into a business model that does not require Google to pay for a key input that drives the value of this search product."

28. Finally, the suggestion that the "significant concentration" of the New Zealand media industry is somehow a distinguishing feature from Australia that means there is not the same imbalance of bargaining power here in New Zealand is also readily refuted. To the extent there is any additional concentration in news media in New Zealand (if any), that pales in comparison to the concentration in the search and social media markets in New Zealand and does not diminish the finding that each of Google and Facebook are unavoidable trading partners for news publishers (whereas no individual news publisher is an unavoidable trading partner to either Google or Facebook). For example, it is estimated that Google has a 93.96% market share in search in New Zealand (see Figure [7] below)²⁴ and Facebook / Instagram maintains a share of 74.32% in social media in New Zealand (see Figure [8] below).²⁵

Figure [7] – Google search engine market share in New Zealand

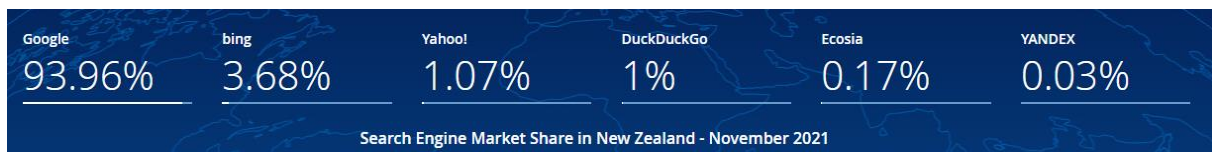


Figure [8] – Social media market share in New Zealand



29. Rather than acknowledging the commercial realities of their significant market presence and bargaining power in New Zealand, the Digital Platforms' submissions to the Commission seek to focus on voluntary funding / education initiatives they have chosen to implement. However, those voluntary (and often token) initiatives are no substitute for the ability of news publishers to be able to engage in meaningful negotiations with the Digital Platforms for fair and commercial remuneration (as has occurred in Australia).
30. In a more competitive environment, the Digital Platforms would be forced (by competitive forces) to fairly and commercially recognise the value of New Zealand news publishers' content to their business and to negotiate some form of revenue sharing. The reality is that NPA, and the proposed participants in its collective bargaining group, are not seeking an

²³ News Corp Australia. Submission to the Australian Competition and Consumer Commission. Response to the Digital Platforms Inquiry Preliminary Report. 1 March 2019.

²⁴ <https://www.accc.gov.au/system/files/News%20Corp%20Australia%20%28March%202019%29.pdf>

²⁴ <https://gs.statcounter.com/search-engine-market-share/all/new-zealand>

²⁵ <https://gs.statcounter.com/social-media-stats/all/new-zealand>

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unfair advantage or uncommercial terms from the Digital Platforms. Rather, they are simply seeking the opportunity to counter the significant imbalance in bargaining power to negotiate for fair payment for use of content that is currently used by the Digital Platforms for free.

31. For these reasons, NPA reiterates its view that the application plainly delivers public benefits by assisting in mitigating that bargaining imbalance to better achieve fair and reasonable remuneration for news publishers, and contributes to the production of journalism in New Zealand (which in turns benefits the functioning of New Zealand's democratic society).

RESPONSE TO THE SUBMISSIONS FROM TVNZ, RNZ, AND DISCOVERY

32. We have reviewed the submissions by TVNZ, RNZ, and Discovery (collectively the "**Broadcasters**").
33. While those submissions from the Broadcasters recognise the issues arising from the significant imbalance in bargaining power in dealing with Google and Facebook, they suggest that their businesses will be detrimentally impacted if they are not also included within the scope of NPA's application.
34. However, NPA's application, on behalf of news publishers, does not prevent the Broadcasters from seeking to agree upon their own arrangements with Google and Facebook, including by seeking Commission authorisation to form their own collective bargaining arrangement to negotiate collectively with Google and Facebook if they should wish to.
35. Indeed, that is precisely what has occurred in Australia whereby a group of publishers, Country Press Australia ("**CPA**"),²⁶ and a group of broadcasters, Commercial Radio Australia ("**CRA**"),²⁷ each filed separate authorisation applications to collectively bargain with Google and Facebook. NPA's application does not preclude the Broadcasters' own ability to bargain, or even collectively bargain, with Google and Facebook. For example, the industry bodies for those Broadcasters, such as Think TV,²⁸ could seek authorisation to form their own collective bargaining group (being a grouping that could include TVNZ, RNZ, Discovery, Sky, Mediaworks, and other broadcasters in New Zealand). []
36. In this respect it is important to note that NPA, as its name suggests, represents the interests of "news publishers". That is to say, NPA's core constituency is news producers that have had their genesis as news publishers in written form, rather than broadcasters, such as RNZ, TVNZ, and Discovery that have had their genesis in the broadcast of audio or video content (with that content often being general entertainment, and not just news, content). NPA considers that the issues facing the news publishing industry that it is seeking to represent through the application are different to the issues facing the Broadcasters. That is reflected both in the submissions of the Broadcasters, and their respective business models. For example:
- (a) Discovery's submission states that the "application does not set out a compelling case for urgency". Discovery's different perspective to NPA on the need for urgency likely reflects that news is only a portion of Discovery's overall business model (with a significant proportion of its business being general entertainment), and that the impact that the Digital Platforms have had on the revenue models of

²⁶ (5 August 2021). Country Press Australia can collectively bargain with Google and Facebook.

<https://www.accc.gov.au/media-release/country-press-australia-can-collectively-bargain-with-google-and-facebook>

²⁷ (29 October 2021). Commercial Radio Australia to collectively bargain with Google and Facebook.

<https://www.accc.gov.au/media-release/commercial-radio-australia-to-collectively-bargain-with-google-and-facebook>

²⁸ <https://thinktv.co.nz/about-thinktv/about-us/>

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television broadcasters is materially different to the significant impacts on the revenue models of news publishers;

- (b) TVNZ's submission states that it "has experienced significant decline in advertising revenue as audiences use the Digital Platforms to source their news, and advertisers have followed." However, it is apparent that TVNZ is operating within a very different commercial construct to the news publishers, with there being a different ability to monetise advertising associated with terrestrial and digital television content (compared to news publishers' businesses), and with TVNZ receiving in excess of \$6 million of programme funding in 2021 (e.g, from NZ on Air).²⁹ Demonstrating this, in August 2021 TVNZ announced that it had "recorded net profit after tax of \$59.2 million for the 2021 financial year, an improvement of \$85 million on the previous year",³⁰ which "deliver[ed] the state-owned broadcaster its strongest profit since its 2003 restructuring."³¹ TVNZ's CEO stated that "[t]he last financial year has been quite remarkable for TVNZ. The scale of audiences combined with strong demand for video advertising has enabled the business to recover from the prior year's financial challenges much faster than forecast. This positive momentum puts TVNZ in a position to accelerate its digital transformation and reimagine its future in the rapidly changing media market";³² and
- (c) RNZ's revenue model is reliant on public funding from New Zealand taxpayers – RNZ does not include advertising on its platforms. Accordingly, RNZ's revenue model has not been impacted at all by the significant migration of advertising expenditure to the Digital Platforms.

37. Furthermore, the Government is currently considering the merger of TVNZ and RNZ, with a decision on that expected to be announced "early next year",³³ with it reported that the expectation is a "BBC hybrid... with a strong public media service mandate to operate across a variety of platforms, some advertising-free. The expectation is that it would operate under a mixed-funding model with revenue from Crown and non-Crown sources."³⁴ If that were to occur, any differences that exist between the current business model of TVNZ and NPA's members (and other news publishers) would be further exacerbated.

38. Given these differences and uncertainties in future business models, NPA considers that the addition of Broadcasters to its collective bargaining group would complicate its application for authorisation and (if approved) its negotiations with the Digital Platforms. NPA's application is intended to be on behalf of news publishers that (a) have similar business models to each other, and (b) are facing similar challenges in their business models (rather than needing to negotiate on behalf of both publishers and the Broadcasters, given their different business models and likely different requirements). Accordingly, NPA considers that the inclusion of

²⁹ TVNZ Annual Report. Financial Year 2021.

https://corporate.tvnz.co.nz/assets/Uploads/Reports/TVNZ_AnnualReport_2021+FINAL.pdf

³⁰ (31 August 2021). TVNZ records near \$60m net profit on back of high audiences, online growth. 1 News. Retrieved from: <https://www.1news.co.nz/2021/08/30/tvz-records-near-60m-net-profit-on-back-of-high-audiences-online-growth/#:~:text=TVNZ%20has%20recorded%20net%20profit,million%20on%20the%20previous%20year.&text=Chief%20executive%20officer%20Kevin%20Kenrick,million%20on%20the%20previous%20year.>

³¹ (31 August 2021). Post-lockdown bounceback delivers record TVNZ profit. Business Desk. Retrieved from:

<https://businessdesk.co.nz/article/services/post-lockdown-bounceback-delivers-record-tvz-profit>

³² (31 August 2021). TVNZ records near \$60m net profit on back of high audiences, online growth. 1 News. Retrieved from: <https://www.1news.co.nz/2021/08/30/tvz-records-near-60m-net-profit-on-back-of-high-audiences-online-growth/#:~:text=TVNZ%20has%20recorded%20net%20profit,million%20on%20the%20previous%20year.&text=Chief%20executive%20officer%20Kevin%20Kenrick,million%20on%20the%20previous%20year.>

³³ (3 November 2021). Ministers delay decision on TVNZ, RNZ merger until next year. Stuff. Retrieved from:

<https://www.stuff.co.nz/business/126870825/ministers-delay-decision-on-tvz-rnz-merger-until-next-year>

³⁴ (2 November 2021). Cabinet delays decision on new public broadcaster. Newsroom. Retrieved from:

<https://www.newsroom.co.nz/cabinet-delays-tvz-rnz-merger-decision>

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the Broadcasters in the scope of its application could unnecessarily prolong its application process and (if approved) its negotiations with the Digital Platforms, in circumstances where the Broadcasters (either directly or through, say, Think TV) have the same ability as the NPA to seek approval for their own collective bargaining group if they consider that useful for their businesses. []. NPA is not minded to include the Broadcasters within the scope of its application for the reasons outlined.

39. If the Commission considered it helpful for its application, NPA would be willing to provide further clarity that, in addition to NPA members, its application is intended to cover businesses that it would regard as news "publishers" (as opposed to broadcasters), i.e. media businesses whose primary business is to publish news primarily in written form for the purposes a newspaper masthead, magazine, or online news website. For example, the New Zealand Media Council website draws a distinction between "published material in newspapers, magazines and their websites" and "broadcasters".³⁵ []:
- (a) [];
 - (b) []; and
 - (c) [].

CONCLUDING COMMENTS

40. For the reasons set out in its application, NPA remains confident that the Arrangement would result in a number of public benefits without resulting in any public detriment. Accordingly, NPA is confident that the public benefits of the Arrangement significantly outweigh any detriments and, therefore, that the Arrangement should be authorised.

³⁵ <https://www.mediacouncil.org.nz/principles/>