

News UK—supplementary written evidence (FOJ0106)

Lords Communications and Digital Committee Inquiry - The Future of Journalism

During my evidence session with the committee on 23 June, I committed to follow up with supplementary evidence. This included News Corp Australia's submission to the Australian Competition and Consumer Commission (ACCC). Please see the attached supporting document, which the ACCC has now published. I also offered to provide additional evidence on the challenge for the future sustainability of print supply chains.

Since my appearance, the CMA has published its final report on digital advertising and online platforms. I have provided our initial reaction to the report and its recommendations. In addition I wanted to provide our view on some of the points made to the committee by Google following their appearance, as I believe these warrant some clarification from our side. Finally I supply further thoughts on apprenticeships and how they may be developed to support more young people from diverse backgrounds to enter the profession, as I appreciate this is an area of particular interest to this inquiry.

Initial reaction to final report of the CMA's market study into digital advertising and online platforms

News UK welcomed the findings of the CMA's market study into digital advertising and online platforms. The report is unambiguous about the harm consumers, advertisers and publishers experience, as well as the potential for future detriment, as a result of the practices of Google and Facebook. For the health of our digital economy, and for society to continue to benefit from a plural and diverse media online, the inequities identified must be resolved as a matter of urgency.

We are supportive of the CMA's proposed two-fold approach to regulation: regulating the behaviours of the platforms through a binding code of conduct, and establishing a pro-competitive, ex-ante regime to encourage better outcomes within the market. In our submission to the CMA – which was referenced within the final report of the study – we argued that a code alone would not be sufficient to curb the incentives of Google and Facebook to exploit their market position. We were pleased that the CMA agreed and proposed a framework which is forward looking.

However, we are anxious that the time for action is now as the industry does not have the benefit of time to wait. The decision not to go to a market investigation, despite demonstrable harm found within the market study, is perplexing. The CMA has stated that if the government does not move quickly to regulate it will step in with a market investigation, but has not identified what it considers to be too long or whether other factors might trigger it into action. In any case, the time it will take for the newly created Digital Markets Taskforce ('DMT') to develop a set of proposals; for the government to respond (and agree); possibly for further consultation and pre-legislative scrutiny to be undertaken; for a legislative slot to have been found; for presumably complex novel legislation to be passed; and for the forthcoming enactment, development of guidance and so on to have been consulted on and set; risks allowing considerable time to lapse and for those already identified impacts to worsen, or indeed for the market to have 'moved on'. The government could, if it wishes to, introduce legislation ahead of the DMT concluding its work. As the Committee will be aware, the Cairncross and Furman reviews were commissioned over two years ago, further delay to implementing their recommendations is of significant concern to us and to the sustainability of the press more generally in the UK.

We are further concerned that as the DMT has been instructed to create a regulatory regime beyond the scope of the market study – to include social media, ecommerce, apps, etc. – that this will inevitably create further complexity for the development of this novel regulation. To satisfy numerous dissimilar concerns within a single legislative framework from scratch will be extremely challenging. This is not to say that we disagree with the stated aims for the DMT, but that we believe it should focus its attention where it is most urgently needed now while seeking to develop its wider programme: namely in addressing the specific issues in the digital advertising market, which are impacting on publishers ability to adequately monetise their journalism, despite the growth in online audiences.

The CMA references the international efforts already underway to introduce ex-ante pro-competition regulation in other territories as evidence of the growing consensus that the existing competition framework needs to be addressed. Foremost is the Australian Competition and Consumer Commission ('ACCC'), which is seeking to achieve balance in the commercial relationships between publishers and platforms through a mandatory code of conduct. The ACCC proposed code, and newly published draft legislation provides that platforms and publishers enter into negotiations either collectively or bilaterally, and that if an agreement cannot be reached parties can enter into a Final Offer Arbitration ('FOA') with an independent third party. The ACCC work offers the UK's own competition regulator a helpful 'roadmap' to developing a workable payment for content model within its own codes.

In the short term, we believe the CMA should look at its existing powers, to determine whether it could also create and enforce a framework similar to the ACCC, while the DMT continues its proposed programme of work. In the absence of a market investigation at this time, we would welcome greater clarity on what circumstances would prompt a market investigation. We believe the government needs to act quickly, to introduce the necessary legislation, and to consider what interim measures could be introduced in the meantime.

Comments made by the platforms to this committee

"Google did not ask for publishers to waive any right. To the contrary, Google asked whether publishers would like to exercise their neighboring rights to authorise the use of short extracts of their articles to be used as short previews of what content a user will find behind the link - in other words, used to make their search results more appealing to users. Publishers had the choice then, as they have the choice today, to grant or deny that permission."

Google sent a mass email to operational colleagues within publishers, who may not have been aware of the new right which had been transposed into French law and its potential implications for publishers in territories outside of France. Publishers were essentially provided with a 'false choice': to accept Google's terms to give permission to Google to use 'snippets' of their content for free, otherwise the snippets would be removed resulting in a loss of traffic and subsequently revenues. Google did not offer to enter into any discussions with publishers or provide a route for alternative arrangements as the options in the email presented a fait accompli.

News UK decided not to waive its right, and did not grant permission to Google to use its content for free in snippets. As we had anticipated, the withdrawal of snippets led to an immediate impact to our traffic in France. *The Sun* for example saw a 43% decrease from France in search, during a period where our traffic rose by 5% in the UK. For context this change was implemented at a time where Brexit continued to dominate public discourse, the Conservative Party had called a General Election and, sadly, London was again subjected to a terrorist attack on London Bridge. It would be reasonable to

assume that international audiences, including French audiences, would seek out UK titles for relevant and up to date reports of what was happening in the UK. Indeed, we saw a small increase in page views and in users from Germany and Spain during the six week period after the change came into effect in France.

As we stated in our original evidence, the actions by Google have prompted the French competition authority to intervene.

"a range of factors are included in the way the algorithm ranks stories."

We too are surprised by Google's assertion that they do not have editorial control over the content within their products. We do not suggest that decisions are made on specific pieces of content by an individual within Google, rather the platforms are responsible for curating through algorithms which they have designed, which are entirely within their control, and through which they operate a set of terms which determine what content is surfaced and in what order. In this regard they have editorial control. These algorithms operate without any consultation or external oversight. Changes can and are made which can have significant impacts to how content is surfaced without any prior notice, leading to business impact.

We believe there is evidence that despite their suggestion, there is bias within search results. From our own internal analysis of articles related to coronavirus, we have found that articles from the BBC and *The Guardian* consistently rank first, second and third in the top of search results for news stories. These organisation's coverage is not more comprehensive or better than our titles', yet their articles are consistently above those of *The Times* and *The Sun* without any obvious reason. Being at the top of search has a significant impact on traffic - particularly on mobile and tablet devices where the screen size means that the top search results are the only ones on view until a user scrolls down.

Supply chain matters

Newspaper deliveries in the UK have operated on historic supply chains, which date back to agreements made in the 1980s. These agreements created a duopoly network, where two wholesale providers operate a patchwork of territories spread geographically across the UK. Effectively they deliver newspapers from across the industry to the individual retailers. As a consequence, the network carries inefficiencies and the providers are unable to innovate their businesses in ways that would allow them to create other revenue streams (i.e. in delivering other goods).

Wholesaler revenues come from a charge which is passed to retailers (on average £56 a week). Given changing consumer media usage habits, it will become increasingly difficult for retailers to justify paying this charge as the profits they are making from newspapers continue to decrease. Cover price increases can mitigate the impact to some degree, however it is increasingly likely that some retailers may choose to stop carrying the newspaper category, despite demand from consumers if it is no longer financially viable for them to do so. During the lockdown, News UK raised this matter with the DCMS as an issue which needs addressing, as the impact of the pandemic brought this issue into sharper focus for publishers. We have asked the government to help facilitate a safe harbour, to enable discussion in the industry that could find ways to address inefficiencies in the market.

We understand that we are not alone in our concerns about the future sustainability of print networks. Indeed, only recently the NFRN, the trade body which represents independent retailers, expressed concerns about increases to the charge by one operator

and spoke about the need for a government-facilitated roundtable discussion within industry¹.

Encouraging greater diversity in talent - apprenticeships

In addition to the evidence we supplied, we wish to share further thoughts on encouraging greater diversity in our newsrooms through apprenticeships. As previously stated, the traditional route for young people entering journalism - either with or without a university degree - was to start in local papers. However this is increasingly challenged. Apprenticeships would appear to be a sensible viable route for creating new talent pipelines into the industry.

Unfortunately, our preferred provider of the NCTJ course is not able to accept the Apprenticeship Levy to pay for our students. In addition, it is very hard to maximise the use of this fund because of the volumes of trainees we would need to bring in. Even though apprenticeship training should be funded from the levy, we additionally have a duty to look after, pay and support each trainee in the workplace, which limits numbers at any one time. Some flexibility in how the Apprenticeship Levy can be used would be welcome.

We value being able to recruit our apprentices, but we would be open to trying different things. A pool of talent that learns cross industry, but which ensured employers remained accountable to the development of trainees could be worth exploring. We have even discussed having a specialist qualification designed to enable entry talent to learn about all forms of journalism.

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¹ 'Trade bodies raise newspaper supply chain concerns to Media Minister', 15 July 2020
<https://www.slrmag.co.uk/newspaper-supply-chain-concerns/>