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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Summary of Discussion of the Roundtable on Competition issues in News Media and Digital Platforms

Annex to the Summary Record of the 136th meeting of the Competition Committee

3 December 2021

This document prepared by the OECD Secretariat is a detailed summary of the discussion of the Roundtable on Competition issues in News Media and Digital Platforms, held by the Competition Committee on 3 December 2021.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/competition-issues-in-news-media-and-digital-platforms.htm>

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Summary of the Discussion of the Roundtable on Competition issues in News Media and Digital Platforms

On 3 December 2021, the Competition Committee held a roundtable on competition issues in news media and digital platforms chaired by Professor Frédéric Jenny.

1. Introduction by the Chair

The Chair introduced the roundtable by describing the growing concerns regarding news media, who provide public interest content but face declining advertising revenue, and their exposure to the market power of a few advertising-funded platforms with whom they both cooperate and compete. A central question of the roundtable was the extent to which these concerns, and potential remedies, reflect competition-related theories of harm or public interest considerations.

The Chair proposed the discussion to focus on three issues: the competitive dynamics between digital platforms and news media; theories of harm and the effects of digital platforms' conduct on publishers and consumers; and enforcement and regulatory solutions.

The Chair then introduced the three expert speakers who took part in the discussion and had also submitted video contributions in preparation for the roundtable: **Andrea Prat**, Richard Paul Richman Professor of Business at Columbia Business School and Professor of Economics at Columbia University; **Derek Wilding**, Co-Director of the Centre for Media Transition at the University of Technology Sydney; and **Helen Jenkins**, Managing Partner at Oxera.

2. Summary of background paper by the Secretariat

The Secretariat briefly summarised the background paper prepared for the session. The Secretariat explained that the internet had represented an enormous potential for news businesses by reducing costs of publishing and distributing news content. At the same time, competition from large digital platforms caused advertising revenue to decline steeply. The internet also changed consumer habits, for instance by promoting consumption of news from multiple sources.

The Secretariat noted that the relationship between news publishers and digital platforms is complex and has both vertical and horizontal dimensions. Vertically, news publishers engage with several digital platforms providing various services (such as search, social networks or news aggregation) in order to ensure that content is widely distributed. Certain digital platforms are also intermediaries in the supply chain for display advertising. Horizontally, digital platforms compete with news publishers for user attention and for the supply of display advertising space. They also overlap in the curation of news content, with digital platforms increasingly filtering and bundling content, as well as in the production of news content and the acquisition of third-party content rights.

The Secretariat outlined various practices that have been raising competition concerns: “snippets” of news content in links on general search services, which can detract from traffic to news sites; publication formats for news content on digital platforms, which can

lead to platforms retaining traffic and user data; access to data of users consuming news content on digital platforms; digital platforms' algorithms for selecting and curating news content; and fees charged and lack of transparency in the intermediation of display advertising.

The Secretariat explained the associated theories of harm. In the vertical dimension, practices reducing referrals to news websites and applications may constitute exploitative conduct. In the horizontal dimension, digital platforms' exercise of market power can result in exclusionary conduct, such as harming news publishers' ability to compete in targeted advertising by collecting user data. Moreover, digital platforms' refusal to deal with news publishers or decisions to pay limited compensation to selected publishers could amount to unfair trading conditions and discrimination in some jurisdictions. Digital platforms may also be viewed as leveraging their market power in their core markets, in order to coerce publishers to adhere to policies that benefit the platform but harm their own interests. Finally, several practices could constitute forced free riding on publishers' investments to generate news content.

The Secretariat then described the main initiatives being undertaken against digital platforms. Enforcement cases address conduct undermining competition in digital advertising and affecting the ability of news publishers to generate display advertising revenue, as well as exploitative conduct by dominant digital platforms that frustrates the objectives of newly enacted copyright laws. Regulatory initiatives include interventions to ensure a fair remuneration of news content, as well as market studies, sector inquiries and forms of ex-ante regulation.

The Secretariat ended by noting that there are significant differences across jurisdictions, in particular between abuse of dominance cases and new regulation.

3. The relationship between digital platforms and news media

Derek Wilding presented figures from the UK communications regulator Ofcom showing the high penetration of social media such as Facebook and Twitter as online sources of news. Ofcom reported that 33% of online news users cite social media posts as their main source of news. With regard to referrals, 25% visit news sites directly while most go via "side-door" access (26% via social media and 25% via search).

He next showed figures from Australia for trends in overall news consumption, which he described as depressing: all sources are declining with the exception of social media. Currently 23% say that social media is their primary source of news, compared with 40% for TV and 4% for print. He found the decline in print news consumption concerning because print has traditionally been one of the "engine rooms" of journalism. He also added that the proportion of consumers paying for online news is low in many countries, and evidence from Australia shows a very low willingness to pay for such content.

Finally, he presented a figure from the Australian Competition and Consumer Commission (ACCC) Digital Platforms Inquiry showing the growth in online advertising expenditure at the expense of print advertising, and a breakdown of online advertising by platform. Most recently it is estimated that Google had around 53% of this revenue and Facebook 28%, leaving 19% for all other providers.

Prof. Wilding highlighted several aspects of the relationship between news media and digital platforms. News media are losing direct advertising income to digital platforms, but depend on these platforms as unavoidable business partners for "side-door" referrals. The ACCC has highlighted Google's dominant position within key parts of the ad tech supply

chain. Other issues include control over customer data, sudden algorithmic changes that can undermine a business model, and ranking of content. There is also the question of an uneven regulatory playing field in which media entities are subject to regulation of licensing and ownership which does not apply to digital platforms.

Andrea Prat focussed on the causes and effects of changes in the revenue model of news organisations, which was examined in depth in the 2019 report of the Stigler Center Committee on Digital Platforms in the United States, of which he was a member.

He echoed the points made by Prof. Wilding regarding the collapse in advertising revenue and the consequences for journalism output. In the United States, total advertising receipts of newspapers fell by more than half between the mid-2000s and the early 2010s, and they continue to decline. This has been accompanied by a reduction in the supply of news, most strikingly at local level: since 2004, 1800 newspapers have closed down with the result that half of US counties now lack a daily newspaper.

He then presented data on voter information and plurality, which are of public interest significance because of their role in enabling effective democracy. A large recent study in which Prof. Prat was involved has shown that voter information in the US is highly unequal, with around 50-60% of voters able to identify the most important story of recent months and usually not believing fake stories, while 40-50% are unaware of the main recent story and struggle to distinguish between fake and real stories. With regard to plurality, a study of 38 countries shows a high degree of concentration in news provision, with two or three large organisations controlling a majority of attention share, especially among low-information voters.

Helen Jenkins discussed the digital media value chain, noting that it is essential to identify the relevant market failure in order to target remedies appropriately. She observed that digital platforms can be grouped according to three functions within the value chain, raising different issues and with different implications for competition and regulatory approaches. One is the ad-tech stack, in which digital advertising platforms enable news publishers and other content providers to better monetise their online content by matching them with advertisers. The rapid shift of advertising from print to online shows the success of this technology. Several authorities have found evidence of high market shares in several layers of the ad-tech stack, particularly for Google and Facebook. The UK Competition and Markets Authority (CMA) has found that the ad-tech stack takes around 35% of the total advertising revenue, which is much higher than in equivalent offline markets. These facts raise standard vertical competition concerns regarding market power in these upstream markets.

Dr Jenkins explained that a second issue concerns the control of consumer attention by consumer-facing platforms, and the increasingly important interaction with news media. There are two types of content display platform: social media platforms such as Facebook and Twitter, presenting news content alongside other forms of content, and news aggregators such as Google News and Apple News, offering distribution channels that curate a range of news content. Such platforms can give news publishers better reach and engagement, and benefit from strong economies of scale and scope and network effects. The issue in this case is how the share of these benefits is bargained over.

The Chair asked why media organisations' advertising revenue began to decline before the emergence of the digital sector. He also cited a study by Accenture for Google that argued that the majority of online advertising had come from new growth, rather than displacing the existing markets for traditional advertising, and found that nearly half of the income loss of the news media was due to the rise of third-party classified digital ads.

Prof. Prat replied that classified ads played different roles in different countries, but confirmed that the advertising decline had begun earlier in the US. He said a widely held view was that Craigslist and other online classified sites had killed off the classifieds model for local newspapers in the US. **Dr Jenkins** added that the pressure on news media revenues had been exacerbated by the way platforms' advertising matching had evolved.

4. Theories of harm and the effects of digital platforms' conduct on publishers and consumers

The Chair invited **Helen Jenkins** to begin the second part of the roundtable. Dr Jenkins described possible harms in relation to the different roles played by digital platforms.

The first issue is pressure on funding for journalism due to the decline in advertising revenue, and hence public interest concerns about democratic content and plurality. This decline reflects not only market power in the ad-tech supply chain but also the competitive superiority of targeted digital advertising over print and a reduced scarcity of access to consumers. Reduced advertising revenue combined with low consumer willingness-to-pay for news content raises the question of what the funding model for quality journalism should be.

The second issue is whether platforms are taking more than a fair share of the benefits of driving traffic to news media or whether they are unfairly exploiting market power caused by enduring barriers to entry arising from data access and vertical conduct such as self-preferencing. Dr Jenkins said that while competition law was an instrument well suited to some of these challenges, a public policy desire to preserve the incentive for public interest journalism may require regulatory standards and other forms of consumer protection.

Belgium intervened mentioning that, in merger cases not involving digital platforms, it had recast the issue of media plurality as a consumer choice issue, which was then treated as a traditional competition law problem.

Japan presented findings from a market study on digital advertising published by the Japan Fair Trade Commission (JFTC) in February 2021, which examines competition issues concerning transactions between news media and digital platform operators based on questionnaires and interviews.

As in other jurisdictions, Japanese consumers often obtain news content free of charge from online sources. Therefore, digital advertising is becoming increasingly important as a source of revenue for news media, which can be earned in two ways.

First, news media publish ads on their own websites, with digital platforms acting as intermediaries between them and advertisers. Since revenue depends on the quantity of impressions and clicks, news media have an incentive to maximise the number of accesses to their own websites. Responses to the questionnaires showed that Google Search is the most important source of referrals. In this regard, Japan described two concerns expressed by news media businesses over these transactions. First, they do not have visibility over which advertisements are actually displayed on their websites, the attributes of the advertisers and what advertisers actually pay. Some news media businesses were sceptical about whether they were receiving appropriate revenue for the ad space. Second, changes in algorithms affecting search engine rankings, which have a major impact on news media revenue, sometimes occur without warning or explanation.

Second, digital platforms act as publishers and news media businesses contract with them to have their news content shown along with display advertising, for which they receive a portion of the revenue. Japan explained that news media complained about the lack of

transparency in the calculation of fee revenue, which prevents them from monitoring whether they are being fairly remunerated and weakens their ability to negotiate. News media also reported that they have no choice but to provide content to portals even if they are dissatisfied with the contract terms, because of the need to compete with rivals for consumer attention.

The market study also identifies concerns on quality of news content by rewarding the number of clicks and impressions, which can encourage clickbait and fake news. Without a competitive environment in which high-quality news is fairly rewarded, consumers may be deprived of high-quality journalism critical for democratic society and economic development.

Japan concluded by setting out desirable actions by digital platform operators to increase the transparency of digital advertising transactions and ensure a fair competitive environment. These include providing information to news outlets about fee calculations and changes in search ranking algorithms, and accountability when platforms service both intermediaries and publishers. Digital platforms should also establish an effective consultation system.

The Chair asked whether these were competition issues, suggesting, for example, that a supermarket is not expected to consult with its suppliers on allocation of shelf space to various products. **Japan** replied that the lack of information is much more severe for news media businesses dealing with, for example, Google.

Spain described problems of lack of transparency and self-preferencing as identified in a recent market study into online advertising by the National Commission for Markets and Competition (CNMC). These issues can reduce consumer welfare by undermine publishers' revenue and incentives to provide high quality news, and by increasing costs for advertisers, which may be passed on as higher prices for their products.

In some transactions, publishers and advertisers are unable to identify each other, i.e. advertisers do not know where their ad has been displayed and publishers do not know which ad has appeared in their website. This prevents them from establishing long-term relations for specific campaigns, which is a problem for publishers since direct buying campaigns are used for premium inventory. Publishers also do not have information on how much advertisers are willing to pay for their inventory, which makes it more difficult for them to determine their optimal reserve prices in response to demand, reducing their revenues. In addition, advertisers do not have complete information about the distribution to intermediaries of the 30-40% gap between what advertisers pay and what publishers receive. In contrast, major platforms market their own inventory without intermediaries. Consequently, advertisers and publishers are not in a position to make optimal decisions, while vertically integrated platforms may consolidate their market power and eventually impose discriminatory conditions or standards restricting interoperability.

Self-preferencing issues also arise where vertically integrated digital platforms sell their own inventory without any intermediary but also act as intermediaries for third parties' inventory. They may therefore favour their own inventory or intermediation services, for example by imposing interoperability requirements that prevent publishers from switching to a different intermediary. Publishers therefore may not receive the best offer for their inventory, while the self-preferencing platform strengthens its market power along the value chain.

The Chair asked whether empirical analysis existed on the effects of the recent discontinuation of Google News in Spain. **Prof. Prat** referred to a recent working paper that found that overall news consumption had decreased.

The Russian Federation touched on the theories of harm in two ongoing cases by the Federal Anti-Monopoly Service (FAS Russia) in relation to media content and advertising. One case is against Yandex, which has a dominant position in the internet search market in Russia and is held to be self-preferencing by favouring certain categories of news and types of advertising in search results. The second case is in relation to Google’s policies regarding the suspension and blocking of accounts and circulation of user content on its YouTube video hosting service, which FAS Russia considers to be non-transparent, biased and unpredictable. Although YouTube does not place its own content, FAS Russia considers that YouTube should not exercise arbitrary and unreasonable discretion over consumers and creators of content since it is one of the main channels for news and entertainment and for the promotion of goods and services. At the same time, YouTube should have some freedom of action in order to comply with relevant national legislation, and to protect users from prohibited content and unfair actions by other users.

The United Kingdom discussed the key theories of harm identified in a market study on online platforms and digital advertising by the Competition and Markets Authority (CMA). Platforms affect publishers through both their market power in digital advertising and their position as gateways for publishers to host content and access consumers. The market study found that in the UK, Google and Facebook benefit from very strong network effects and economies of scale and scope in their respective markets and engage in conduct to reinforce and extend their market power. The core theory of harm in relation to advertising is that this conduct allows them to build very significant data advantages compared to smaller competitors and publishers, which allow for better targeting as well as measurement and attribution. As a result, publishers are struggling to compete and typically earn much lower returns per user from advertising, which then reinforces the market power of large platforms.

In addition, harm to publishers can be exacerbated by the lack of competition in ad-tech services, which leads to higher cost for publishers and further weakens their competitive position in selling advertising space. Moreover, the approaches to data and privacy by digital platforms can have a wider market impact, including on publishers’ ability to compete in digital advertising. For example, the CMA is currently investigating Google’s privacy sandbox proposals, in which it intends to remove third-party cookies from Chrome and replace them with alternative privacy sandbox tools. The CMA is concerned that this change could reinforce Google’s data advantage over publishers and other competitors or allow it to self-preference its own services.

In relation to content, the study found that Google and Facebook account for nearly 40% of traffic to the major news publishers in the UK and are “must-have” for reaching at least some groups of consumers. This gives them significant bargaining power over publishers, which leads to a variety of concerns. One is over publishers’ lack of access to data on how users engage with their content, which is valuable for selling advertising. This concern relates especially to “must-have” mobile web formats such as accelerated mobile pages (AMP) and instant articles (IA), which provide faster loading and higher rankings by the platform’s algorithms by hosting the content directly on platform servers. The study also identified concerns over a lack of transparency of search and ranking algorithms, limited control over content presentation and branding, and fair payment for content.

The UK concluded that, although not all of the challenges facing online news publishers are a direct result of competition problems, lack of competition can lead to consumer harms and wider social harms. First, consumers can be harmed directly through underinvestment in news by publishers and a reduction in the quantity and quality of news available. Second, competition concerns can also exacerbate broader online harms, for example from ‘fake news’ and misleading information if the authority of journalism is undermined.

Business at OECD (BIAC) observed that theories of harm should be robust and focus on competition issues rather than other failures, and that remedies should be effective, proportionate and capable of being monitored. When considering theories of harm regarding the imbalance of bargaining power between platforms and publishers, it is important to consider the actual competitive dynamics and to avoid remedies that preserve old business models or pick winners between two sides or within one side, such as favouring large publishers over smaller ones. Remedies targeting data sharing and transparency should not diminish the efficiency benefits of algorithmic technology or reduce the incentive to innovate by requiring the sharing of intellectual property or trade secrets. Similar points apply to publishing formats.

Issues that are not market failures in the economic sense are better addressed by, or in coordination with, other agencies such as privacy or consumer protection authorities.

Australia made two remarks on the preceding discussion. First, while it is true that news media businesses lost revenue with the loss of classifieds, they suffered further loss of revenue with the rise of Google and Facebook, who benefit from the content of news media businesses without paying for it, gather data on consumers that others cannot obtain, and do not provide any public interest journalism. Thus, there is no Schumpeterian dynamic creative destruction at play. Second, while issues about the opacity of algorithms and ad-tech are not competition law issues, they demonstrate the market power held by, in particular, Google.

Dr Jenkins commented on news media-online platforms substitution concerns regarding readership and distribution. News media now use digital platforms for these functions, but they are disintermediated from their audience and exposed to market power. It is a difficult question to establish the appropriate share of advertising revenue, so that the benefits are retained and outcomes for consumers and news media are improved.

5. Enforcement and regulatory solutions

The Chair moved the discussion to the question of effective solutions. He noted that solutions being advanced typically involve either the strengthening of copyright protections for media organisations or the use of regulation or competition law enforcement to address the underlying problems.

He referred to Spain's written contribution, which explains that the EU has decided to address the concerns by reforming copyright regulation to encourage co-operation between press publishers and digital platforms. He noted, however, that the European Commission's impact assessment found that similar measures already introduced at national level by Spain and Germany had not proved effective in increasing publishers' revenues from digital platforms.

Spain explained that ancillary rights for publishers were introduced in 2014, requiring digital platforms to compensate publishers for the use of their content online. This right could not be waived by publishers (unlike in Germany where voluntary negotiation is allowed). Some argued that this reform benefited publishers by increasing direct traffic despite a fall in referral traffic. Others argued that the reform was unsuccessful since it led to the closure of most news aggregation services in Spain, including Google News. When consulted on this reform, the CNMC argued that it was preferable to retain voluntary private negotiation between news publishers and aggregators, and that the measures would discourage entry to the content aggregation market.

Spain has very recently introduced a new intellectual property law transposing the EU Digital Copyright Directive, which modifies the ancillary rights of publishers. Aggregation of news media content will require a licence from the publisher either through a collective entity on a voluntary basis or by means of individual negotiations between publisher and aggregator. Aggregation in response to isolated word searches will not be subject to authorisation as long as (i) there is no commercial aim; (ii) it is limited to the minimum necessary to offer the results to the search query; and (iii) there is a link to the original webpage of the publisher.

It is too early to say whether the new law will lead to the reopening of aggregation services such as Google News in Spain; how it will affect relationships between publishers and aggregators; and whether more intervention will be required via new regulation (as in Australia) or competition law (as in France).

Germany reinforced the points made by Australia. The relationship between news media and digital platforms is characterised by significant imbalances in bargaining power, huge asymmetry of information, and market power of intermediaries, especially Google. At the same time, news is not like other products since reliable and pluralistic journalism is a cornerstone of democracy. Digital platforms have offered new opportunities for reaching readers and users, but have also had a negative impact on the financing of news media.

The interaction with copyright laws is another example of the interplay of competition law with other areas of law in the digital economy. Germany is currently undertaking its second attempt to address payments to publishers for news content. The first was an amendment to copyright law in 2013 introducing an ancillary copyright for press publishers, giving them the exclusive right to decide on the online use of their content except for individual words and very short excerpts. This did not lead to Google paying publishers for content. A second measure is the Interstate Media Treaty of November 2020, which prohibits discrimination against journalistic and editorial content by media intermediaries.

The latest and most important changes concern the 10th amendment to the German Competition Act in 2021, in which the new Section 19a on abusive conduct of undertakings of paramount significance for competition across markets contains a provision prohibiting intermediaries from demanding a disproportionate benefit, for example for presenting media content.

Under the new framework, the Bundeskartellamt is currently examining Google's conduct in relation to its Google News Showcase service in response to complaints from publishers, in parallel with a proceeding to designate Google as an undertaking of paramount significance. It is examining three areas: (i) whether the integration of Google News Showcase into Google's general search constitutes self-preferencing or an impediment to the services offered by competing third parties; (ii) whether the contractual terms include unreasonable conditions and make it disproportionately difficult for publishers to enforce their ancillary copyright; and (iii) whether there is discrimination in accessing Google News Showcase.

To conclude, the German framework embodies three important principles: (i) sovereignty of publishers in determining what content to publish, (ii) non-discrimination, and (iii) an adequate contractual relationship between intermediaries and publishers.

The Chair asked whether the concept of proportionate benefit related to the distribution of the respective benefits to the news media and the platform, or to some other measure such as a sufficient amount of compensation. **Germany** replied that the approach would be likely to focus on the extent of benefits to the two sides.

France described the theories of harm and remedies applied in a case against Google relating to the distribution of news content. In 2019, France was the first EU country to transpose the EU Digital Copyright Directive, which aims to promote balanced negotiations between news media and digital platforms by creating ancillary or “neighbouring rights” enabling publishers to control the use of their content. The French law provides guidance for determining the remuneration due to news agencies and press publishers.

In response to the new law, Google announced that it would no longer display extracts of news content, unless the publisher licensed it to do so free of charge. Almost 90% of news publishers granted such licenses. Following a complaint by two associations representing French press publishers and the news agency Agence France-Presse (AFP), the Autorité de la concurrence found that Google’s display policy might be regarded as an abuse of a dominant position on the general search services market in two ways. First, Google may have imposed unfair trading conditions under the French Commercial Code and Article 102(a) TFEU by avoiding any form of negotiation and remuneration for the use and display of content. The Autorité found that publishers and news agencies had no choice but to comply with Google’s display policy in order to avoid a loss of irreplaceable traffic and hence revenues. Second, Google was likely to have treated economic actors in different situations in an identical manner without objective justification, constituting discrimination under Article 102(c) TFEU.

The Autorité issued interim measures obliging Google to negotiate in good faith with publishers and news agencies, provide them with information necessary for this purpose, and continue to display the content during the negotiations. This decision was upheld by the Paris Court of Appeal in October 2020. In July 2021 the Autorité fined Google for breaching the requirement to negotiate in good faith by restricting discussions to a new service called Google News Showcase and not addressing remuneration for existing use of news content. Google has subsequently come to an agreement with AFP but not yet with the press publishers.

The Chair then asked Japan to elaborate on a statement in its written contribution that a mechanism by which news media that provide high-quality content are fairly evaluated, and quality of content is ensured through fair competition, would enhance consumer welfare. **Japan** replied that the decision about such a mechanism remained to be made and would involve not only the JFTC but other agencies.

The Chair also asked what would constitute “abuse of a superior bargaining position” under Japan’s Anti-monopoly Act (AMA). **Japan** explained that one indicator of a superior bargaining position would be the degree to which a news media business is dependent on a digital platform. Regarding abuses of such a position, while the JFTC does not yet have case experience, it would compare the conduct of the platform with traditional practices as part of the assessment.

Austria described the co-operation between its Federal Competition Authority (BWB) and Regulatory Authority for Broadcasting and Telecommunications (RTR) in monitoring digital platforms. A taskforce was set up between the BWB and RTR in 2019 for monitoring digital platforms and identifying potential competition issues. The RTR provides a periodic market analysis, and may be asked to provide input on BWB’s pending cases. The BWB and RTR co-operated significantly over a case concerning Facebook’s acquisition of Giphy.

Australia described its News Media and Digital Platforms Mandatory Bargaining Code as a regulatory solution to the imbalance in bargaining power between large digital platforms and news media businesses. Australia used standard competition analysis in formulating its

views but preferred a regulatory solution to a unilateral conduct case under competition law, which would have taken five years or more to solve the problem.

The 2019 Digital Platforms Inquiry by the Australian Competition and Consumer Commission (ACCC) identified a very large imbalance in bargaining power between Facebook and Google on one hand and news media businesses on the other, due to the fact that each news media business needs these platforms but the platforms do not need any one news media business. As a result of this market failure, Google and Facebook were benefiting from news media content but not paying for it, harming the ability of news media businesses to fund public interest journalism that is fundamentally important to society.

To solve this problem, the ACCC was tasked with designing a news media bargaining code, the two underpinnings of which are a negotiate-arbitrate framework and non-discrimination. A precedent for the negotiate-arbitrate framework in Australia was the access regime put in place at the time of the liberalisation of the telecommunications sector. Platforms are required to negotiate with news media businesses, who can seek arbitration if the parties cannot agree terms. The non-discrimination principle means that designated platforms are not obliged to carry news content, but if they do carry such content, they must enter into a negotiate-arbitrate process with any qualifying news media business.

Google and Facebook lobbied against the code. Google threatened to withdraw its services from Australia and Facebook temporarily removed all news media content. The code was passed with a concession whereby the decision to designate a platform must take account of whether deals have been struck. The threat of designation has encouraged the formation of deals. Australia described the code as enormously successful, with almost all news media businesses having achieved deals with the exception, so far, of the publicly owned multicultural broadcasting service and an academic news provider, which have deals with Google but not with Facebook. The claim that only major players benefited is therefore inaccurate. While it is true that larger players have secured more valuable deals, this would have been the case in the absence of the market failure that the code corrects. It estimated that news media are earning at least an extra 200 million Australian dollars annually as a result of the code, and are employing additional journalists.

The Chair questioned whether the imbalance in bargaining power between the digital platforms and news media businesses also applied to very large news organisations, given the high degree of concentration of news media ownership in Australia. **Australia** replied that all news media businesses had suffered inferior bargaining power with the large digital platforms, given that Google has about 94% of search and Facebook has 70-80% of social media in Australia. Prior to the code no news organisations had been able to secure commercial negotiations with them.

Mexico described a bill to regulate the censorship of speech by social networks, launched by a member of Congress in reaction to the suspension of US President Trump's Facebook and Twitter accounts in January 2021. The Federal Telecommunications Institute (IFT) recommended self-regulation as an alternative in order to mitigate risks to competition and reduce regulatory costs to platforms that could create barriers to competition.

The United States briefly presented a legislative proposal (the Journalism Competition and Preservation Act or JCPA), which would create a limited antitrust exemption for news content creators in order to address the imbalance in their bargaining power with large online platforms. In particular, the JCPA would create a four-year shield from the antitrust laws to give news companies a window to negotiate collectively on terms governing the distribution of their content on large content-sharing websites, defined in such a way as to include Google and Facebook. Companies would only be permitted to co-ordinate if the co-ordination (i) directly relates to the quality, accuracy, attribution or branding, and

interoperability of the news; (ii) benefits the entire industry rather than just a few publishers; and (iii) is directly related to and reasonably necessary for these negotiations.

More broadly, it added that exemptions from antitrust laws are generally disfavoured in the United States but have been used at times to rectify imbalances of power or to promote non-competition values. They should be considered with caution as there is a risk that they may benefit special interests over the public interest. Limiting the scope and duration of the immunity can mitigate such risks. An example of an exemption still active is the Newspaper Preservation Act of 1970, which was introduced when newspapers were under threat from the rise of television but which does not appear to have achieved its aims.

Chinese Taipei explained that it is also following the negotiation model as a way of resolving the uneven bargaining power between news media and digital platforms. The Fair Trade Commission (CTFTC) can grant a cartel exemption under Article 15 of the Fair Trade Act permitting concerted action if it falls within eight statutory criteria and benefits the economy and public interest. If news media organisations were to request an exemption, it would potentially be examined under the criteria of improving industrial development, technological innovation or operational efficiency. The CTFTC would expect to conduct a standard analysis, considering factors such as the collective market share and concentration ratio of the bargaining group, the respective market positions of the media organisations and the platforms, whether the proposed collective bargaining represents an open or closed group, and whether the arrangements are limited to those necessary for achieving the relevant purpose.

It added that there seems to be mixed enthusiasm within the news industry for collective action. Moreover, the CTFTC is conscious of the challenge in assessing whether collective bargaining would serve the public interest and promote industry development and was keen to learn from the experience of other jurisdictions.

6. Concluding comments

The Chair turned to the expert speakers for their concluding thoughts.

Prof. Wilding offered his view of the Australian experience and the relevance of competition policy in dealing with issues affecting news media. He described the code as outstandingly successful when judged by the number of media businesses that now had deals for content sharing and the impact on the hiring of journalists.

Prof. Wilding added that the area of pluralism was one in which competition law runs up against limits. The removal of cross-media ownership restrictions has created a highly concentrated market in Australia. In Prof. Wilding's view, Australia lacks a fit-for-purpose regime for assessing possible further mergers since there is no diversity metric or public interest test. Despite the success of competition analysis in addressing the question of news media remuneration, there remains a risk of an entrenchment of the position of the larger media enterprises. It would be beneficial to be able to monitor the content of the deals being done under the code and the implications for the smaller players.

He also felt that the question of the impact of algorithms on news quality should not be dealt with under the umbrella of misinformation and disinformation.

Prof. Wilding concluded that some issues are better seen as aspects of social policy than competition policy, and the notion of using communications law or media regulation to address such issues should not be abandoned.

Dr Jenkins agreed with Prof. Wilding that regulation and other forms of social policy intervention may need to complement competition interventions where the underlying causes are not market failures that can be addressed through standard competition tools. She also raised the issue of how platforms drive traffic: competition for consumer attention can exacerbate the problem of adverse selection that favours echo chamber content and clickbait as a means to generate advertising impressions and clicks. Platforms have a short-term incentive to operate algorithms that prioritise such content in order to drive traffic, even if in the long term they have an interest in building a trusted ecosystem. A full solution to encouraging high-quality public interest journalism may need to include other forms of intervention to ensure the dissemination of such content.

Prof. Prat raised issues about the news media revenue model and about news plurality. He questioned whether solving the problem of bargaining power over remuneration for content would fix the news media revenue model. The work of the Stigler Center Committee suggested that the advertising revenue model for news media is in terminal decline because of the rise of non-news advertising channels. The alternative commercial model of subscriptions raises competition issues since it tends to favour concentration. If news media cannot be supported by commercial revenues, public funding may be required.

He also raised empirical and conceptual issues regarding media plurality. There is currently no accepted basis for measuring plurality. For example, contrary to other published figures, his own analysis of 38 countries on a holistic measure of attention share suggests that Australia is not in fact among the most concentrated media landscapes in democratic countries. The threat to plurality of ownership concentration raises the question whether mergers should be assessed on competition grounds alone or also based on a public interest consideration, and if so what it should be.

Finally, he posed the question whether the remedies discussed in the roundtable might actually worsen the state of plurality by further concentrating revenue in the hands of large media owners. Data from Australia on whether revenues had grown more for smaller or larger outlets would be extremely valuable in assessing this question.

Australia responded to three points raised by the panel. First, the figure of 200 million Australian dollars may be only 2% of total digital advertising but represents a much higher percentage increase in the digital advertising revenue of news media businesses specifically, given that Google and Facebook command 80% of the total pie. Second, the news media bargaining code was not designed to solve issues of media plurality, and competition policy could not solve all issues affecting news media. Third, the digital boom has contributed to news plurality in Australia by lowering barriers to entry.

The Chair thanked the experts, the delegates and the Secretariat, and concluded the meeting.