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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Competition issues in News Media and Digital Platforms – Summaries of contributions**

2 December 2021

This document reproduces summaries of contributions submitted for Item 3 of the 136<sup>th</sup> OECD Competition Committee meeting on 1-3 December 2021.

More documentation 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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## *Summaries of contributions*

This document contains summaries of the various written contributions received for the discussion on Competition issues in News Media and Digital Platforms (136th Meeting of the Competition Committee on 1-3 December 2021). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an \*.

## *Australia*

The submission draws on the Australian Competition and Consumer Commission's (ACCC) experience in considering and acting on issues relating to the imbalance in bargaining power between leading digital platforms and Australian news media businesses in digital markets.

The Australian Competition and Consumer Commission (ACCC) is Australia's national consumer protection and competition regulator. Australia's competition and consumer law framework allows the government to develop mandatory industry codes of conduct administered by the ACCC. Industry codes of conduct set out minimum obligations and standards of commercial conduct for industry participants.

In the final report of the Digital Platforms Inquiry (DPI Final Report), published in July 2019, the ACCC outlined its findings that the value of digital platforms to users and the lack of close alternatives has afforded both Google and Facebook substantial market power in several digital markets. In addition, the ACCC found that both companies had substantial bargaining power in their dealings with individual Australian news media businesses.

The ACCC found both Google and Facebook were unavoidable trading partners for news media businesses due to the way consumers were accessing news. It also identified several concerns surrounding the relationship between news media businesses and Google and Facebook, including that the substantial bargaining power imbalance had resulted in news media businesses accepting less favourable commercial terms than they otherwise might accept relating to the availability of their content on each of these platforms.

The DPI Final Report recommended the development of a code or codes of conduct to address this imbalance and govern relationships between digital platforms and news businesses. The Australian Government accepted the ACCC's findings, and following an extensive consultation and design process involving collaboration between the ACCC and government departments, the *News Media and Digital Platforms Mandatory Bargaining Code* and came into effect in March 2021.

The Code creates incentives for the major digital platforms to make commercial deals with Australian news businesses by providing a framework for good faith negotiations and a fair and balanced arbitration process to resolve outstanding disputes. The Code does not regulate the subject matter of news content.

While the Code does not yet formally apply to either Google or Facebook, as the Treasurer has not yet designated any digital platforms, it has encouraged both of these platforms to complete commercial content deals with a number of large and small Australian news businesses

The development process and characteristics of the Code are outlined in greater detail in the submission.

## *Austria*

The long-awaited Austrian Cartel and Competition Law Amendment Act – the “KaWeRÄG 2021” – has taken effect on 10 September 2021.<sup>1</sup> While the amendment is a substantive overhaul of the Austrian competition regime, it particularly introduces a number of factors to be considered in analysing a dominant position, some of which specifically address the market conditions in digital markets. These include access to competition-relevant data as well as benefits derived from network effects.<sup>2</sup> In addition, the Austrian Cartel Court is enabled to declare companies active in multi-sided markets as dominant at the request of the Federal Competition Authority (“BWB”) and other regulatory agencies (but not at the request of competitors or other parties).<sup>3</sup>

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<sup>1</sup> Federal Law amending the Cartel Act 2005 and the Competition Act, BGBl. I No. 176/2021.

<sup>2</sup> See Section 4 and 4a Cartel Act 2005, as amended by BGBl. I No. 176/2021.

<sup>3</sup> See Section 28a Cartel Act 2005, as amended by BGBl. I No. 176/2021.

## *Germany*

Journalism and media diversity are a cornerstone of our democracy. The value of media diversity goes far beyond its pure economic significance. Digital platforms are playing an increasingly important role in the financing of journalism. They are changing the way journalism is funded and, in part, determine what content end users get to see. On the one hand, digital platforms offer media companies new opportunities – for example, to reach new customers – but at the same time they can also create dependencies: Digital platforms can become gatekeepers without which media companies cannot reach certain user groups. In addition, digital platforms can also have a (negative) impact on the financing of media companies due to their business model, which often involves no direct costs for the end consumers.

Press publishers have been trying to receive remuneration for the display of short text previews of their content (so-called snippets) by search engines and other digital platforms for more than a decade. Where concrete claims have been at issue, the reaction of the digital platforms has so far generally been to (announce to), discontinue or reduce the display of the relevant content in order to avoid a possible obligation to pay. In the last decade, various national competition authorities have opened proceedings to investigate the behaviour of digital platforms vis-à-vis media companies. This includes an investigation by the Bundeskartellamt into Google's behaviour towards press publishers in 2014. In addition, the German legislator has taken measures in recent months and years to strengthen the position of media companies vis-à-vis digital platforms. In view of these new laws and the associated new powers, both the Bundeskartellamt and the German State Media Authorities (Landesmedienanstalten) have opened new proceedings against digital platforms.

The paper provides an overview of the Bundeskartellamt's activities in this context and shows how the German legislator and other actors are trying to take account of the special importance of media diversity.

## *Japan*

In Japan, the proportion of the digital advertising sales in the total advertising sales and the proportion of the digital advertising cost in the total advertising cost are increasing year by year. Digital platform operators provide a wide range of services, such as search engine and social media with consumers for free. Using digital technologies, digital platform operators accumulate and analyze various data including personal information and location data obtained from users through these services, and expand their digital advertising business, which is their major source of revenue.

In digital advertising markets, in many cases, digital platform operators play not only the role of publishers that own and operate media such as search engine and social media, but also play the role of intermediaries that distribute ads to publishers, responding to the requests from advertisers (including their agencies. The same shall apply hereinafter.). Digital platform operators have been an important platform that connect publishers and advertisers.

The way digital platform operators conduct digital advertising business has a significant impact on their business partners. In particular, for traditional news media such as newspapers (hereinafter referred to as "news media") which have been traditionally earning revenue from the advertising business as publishers, are being forced to change their revenue structure with the growth of digital advertising transactions. Under these circumstances, whether fair competition environment is ensured between digital platform operators and news media has become a great issue in terms of competition policy.

In the "Final Report Regarding Digital Advertising" (hereinafter referred to as the "final report") published by the Japan Fair Trade Commission (hereinafter referred to as the "JFTC") in February 2021, the JFTC examined issues concerning transactions between news media and digital platform operators from the view point of competition policy.

In the contribution paper from Japan, we would like to share our experiences and consideration based on the final report regarding the suggested questions proposed by the Secretariat as follows:

Chapter 2 "Features of Digital Platform Operators in Digital Advertising Markets" outlines the background that has made it possible for digital platform operators to strengthen their power over their various business partners including news media in the digital advertising sector;

Chapter 3 "Strengthening of the Position of Digital Platform Operators and Competition Law Perspectives" shows general competition law perspectives on competition concerns and issues which the strengthened position of digital platform operators could raise;

Chapter 4 "Outline of Transactions between News Media and Digital Platform Operators and Competition Issues" explains what issues the strengthened position of digital platform operators has raised especially in transactions between news media and digital platform operators and shows views of competition policy on such issues; and

Chapter 5 "Impact on Consumers Regarding the Accuracy and Quality of News" outlines how to ensure an environment in which competition takes place in terms of the quality of content that is important for news media and consumers.

## *Mexico*

This note aims to share the state of the formulation and discussion of ex ante regulation on digital markets in Mexico, providing a brief background of the legal framework surrounding economic competition and regulation in these markets; describing the nature of the debate over this kind of regulations; as well as the institutions involved and its attributions.

In addition, the IFT reviews recent reforms to the income and value-added tax (VAT) laws, concerning digital services of audio and audiovisual content, gambling, gaming, intermediation, dating and remote education; and describes three legislative initiatives to regulate digital markets: 1. the initiative for regulation of digital platforms that provide access to audiovisual content; 2. the initiative to reform the Federal Telecommunications and Broadcasting Law (LFTR) in the matter of freedom of speech in social networks; and 3. the initiative to enact a Federal Digital User Law. This note presents their main provisions, the context of their conception and development, and takes stock of the opinions and recommendations issued by the IFT on these regulation proposals.

## *Russian Federation*

The widespread use of the internet and the rapid development of digital sources of information have increased competition between traditional media as well as their competition with "new" media.

The emergence and strengthening of "new" media has currently led to the fact that for some groups of users they may be the only sources of official information or private opinions. This makes these media important not only for end users, but also for those who create content for them (professional and (or) amateur).

The refusal of the "new" media to distribute particular content can have an extremely negative effect on content creators, as much as the termination of their activities. Thus, "new" media can abuse market power and discriminate against certain counterparties. This negatively affects not only competition between content creators but also consumers that are deprived of the choice of alternative content.

In this context, there are grounds for the intervention of the antimonopoly authorities.

## *Spain*

Digitization has driven new market players and new business models in the news media industry. This creates advantages and disadvantages and some competition issues may arise.

Some competition authorities have started to scrutinize this with cases (like one in France) and reports (like the ones in Spain or Australia).

And governments have adopted other approaches: like copyright (in the EU) or regulation (in Australia and, potentially, again in Europe).

It is clear that governments around the world consider that there are concerns in the relationship between digital platforms and news media, especially considering the central role news media play in the society (through the dissemination of public interest news).

## *Chinese Taipei*

The paper outlines general problems and challenges faced by news media companies in the digital platform era in Chinese Taipei, and then clarifies the competition agency's enforcement stance.

Fostering an environment where large digital platforms and domestic industries can collectively thrive involves various issues covered by different policies. They include policies concerning the development of culture and creative industries, news media industry, fair competition, taxation, protection of intellectual property and overall digital infrastructure development. Chinese Taipei has set up a multi-departmental taskforce to seek a much more comprehensive approach, which is appropriate to address issues within the local context.

The Fair Trade Commission is an independent authority with a role to enforce the Fair Trade Act (FTA). Its mission appears different to those of other regulatory agencies, which focus on development of industrial policies and the promotion of industrial development. Subject to enforcement powers under the FTA, the Commission may step in the following scenarios involving price negotiation between news media businesses and digital platform operators:

1. If news media businesses attempt to jointly negotiate with large digital platforms to increase their bargaining power for revenue sharing, they can apply for an exemption collectively, or their business associations can submit an application on their behalf. The Commission will review the proposed cartel exemption, and grant an authorization if it meets statutory requirements.
2. If a digital platform allegedly forces news media businesses to accept unfair licensing terms by refusing or postponing the negotiation, the Commission will look further into whether the digital platform's behavior constitutes a misuse of market power in violation of the FTA.

## *United States*

There is broad recognition in the United States that the news media provide significant societal value, from keeping the electorate informed, serving as watchdogs on government activities, and disseminating accurate health and safety information, to name a few examples. As has been reported widely, however, the news media industry has been experiencing financial pressures for many years, particularly at the local level.<sup>4</sup> Meanwhile, digital platforms have been on the rise, playing a disruptive role in the distribution and monetization of news. These trends have prompted consideration of whether the antitrust laws should be invoked or amended to address the difficulties facing the press.<sup>5</sup>

The Antitrust Division of the Department of Justice (DOJ) and the U.S. Federal Trade Commission (FTC) (collectively, the Agencies) submit this paper to provide background on this debate in the United States. The paper first summarizes recent legislative activity in this area, including the findings of a recent Congressional inquiry that identified concerns regarding the relationship between digital platforms and news publishers and recommended consideration of a new antitrust exemption to allow news publishers to collectively negotiate with digital platforms. Next, the paper describes an existing antitrust exemption for newspapers under the Newspaper Preservation Act of 1970. It then summarizes previous proposals for antitrust exemptions for the news media. Finally, it describes some examples of news media collaborations that do not rely on exemptions from the antitrust laws. This paper does not include discussion of the Agencies' pending investigations or lawsuits that may be relevant to this topic.

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<sup>4</sup> See, e.g., Penny Abernathy, Knight Chair in Journalism and Digital Media Economics at the UNC Hussman School of Journalism and Media, "News Deserts and Ghost Newspaper: Will Local News Survive?," <https://www.usnewsdeserts.com/reports/news-deserts-and-ghost-newspapers-will-local-news-survive/>.

<sup>5</sup> Modifications to copyright laws are also being considered as a measure to protect press publishers. See, e.g., U.S. Copyright Office, Publishers' Protections Study: Notice and Request for Public Comment (Oct. 12, 2021), <https://www.federalregister.gov/documents/2021/10/12/2021-22077/publishers-protections-study-notice-and-request-for-public-comment>.