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**News Media and Digital Platforms – Note by Chinese Taipei**

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This document reproduces a written contribution from Chinese Taipei submitted for Item 3 of the 136th OECD Competition Committee meeting on 1-3 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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## Chinese Taipei

1. 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.

### 1. Market Overview

#### 1.1. The impact of digital platforms on news and journalism

##### *1.1.1. Distribution channels of news:*

2. Since digital platforms arose, traditional news outlets have gradually been replaced by digital platforms. News media business now relies considerably on digital platforms to increase media exposure of their news articles in order to generate more interest and increase their click through rates. For an online media company, web traffic is essential to its business.

##### *1.1.2. Advertising:*

3. Compared to traditional media, digital platforms can reach a much wider audience and can enjoy more intensified network effects. Based on the number of active users and users' digital footprints owned by digital platforms, advertisers can attract more customers without depending on traditional media for advertising. Platform operators are also able to understand and analyze individual users' preferences to precisely implement targeted advertisements. More advertisers have therefore shifted from traditional media to digital platforms.

#### 1.2. Pathways to news and news media credibility

4. The Reuters Institute's 2021 Digital News Report<sup>1</sup> indicates that the internet is by far the most common way for residents in Chinese Taipei to access news. Each year from 2017 to 2021, over 80% of residents accessed news over the internet, of which approximately 50% of residents obtained news from social media. In contrast with the internet, the proportion selecting newspapers as their main source to access news declined drastically, from 41% to 19% from 2017 to 2021. In terms of TV news, the percentage of viewers decreased from 77% in 2017 to 59% in 2021. It is evident that fewer people access news through traditional media.

5. Levels of trust in news differ depending on the source. Overall, approximately 31% of residents trusted the news that they read and accessed. This proportion is less than worldwide trust in news, which accounted for 44% of the total sample across countries. Of the overall trust in news in Chinese Taipei, trust in news through the internet was 29%, and trust in news on social media was 21%, representing the group with the lowest news trust

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<sup>1</sup> Reuters Institute for the Study of Journalism, University of Oxford, "Digital News Report 2021", [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital\\_News\\_Report\\_2021\\_FINAL.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf), p148-149, last visited on 12 October 2021.

among residents. That is, only one-fifth of survey respondents said that they trust news on social media.

### 1.3. Advertising market size

6. Based on the 2020 Taiwan Digital Advertising Statistics Report, which is published by the Digital Media and Marketing Association (DMA)<sup>2</sup>, data shows that the advertising market in Chinese Taipei reached an overall value of NTD 48.2 billion in 2020, which accounted for a 5.3% growth rate between 2019 and 2020. After 2017, digital advertising expenditure overtook non-digital advertising expenditure and has continued to trend upwards. The gap between digital advertising and non-digital advertising has grown since then. In 2020, the share of digital advertising expenditure accounted for 65.3% of the overall advertising market, and non-digital advertising accounted for 34.7%.

## 2. Problems and challenges around news media and digital platforms

7. The digitalization of the media industry has changed the allocation of market resources and profit making business models. Content licensing between digital platforms and news media companies is not simply an issue around business negotiation, but also influenced by interaction effects of various policies, including industrial policy on the development of journalism, Intellectual Property policy and national digital policy. Concerns around content licensing go beyond competition issues. By observing public policy in a global context, it can be found that in recent years, governments worldwide have paid close attention to the impacts of global digital platforms on their domestic industries and social development. Many governments have proposed reforms of existing laws and launched inquiries into the affected industries in order to ensure that domestic businesses can compete and cooperate on a level playing field with large multinational companies.

8. In Chinese Taipei, the following problems have been encountered by the news media industry:

1. As commercial benefits generated from news content are shared disproportionately between digital platforms and news businesses, this contributes to a situation where news media companies, as content producers, are unable to sustain themselves with limited revenue to create original and quality news content. The industry has called on government to increase support for the industry.
2. Transparency concerns around advertising revenue of digital platforms have increased difficulties for news media companies to obtain such information, which is used as the base to calculate a share that they are entitled to receive.
3. There is a lack of mutual communication channels between digital platforms and news media businesses when digital platforms have power to unilaterally build and change their recommendation systems in terms of news presentation.
4. Algorithms used on digital platforms can manipulate news content in various forms and even impair media independence. They can also indirectly contribute to a rapid spread of poor quality news and misinformation, creating an environment harmful for the sustainability of professional news websites with quality content.

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<sup>2</sup> Digital Media and Marketing Association, “Taiwan Digital Advertising Statistics Report 2020”, <https://drive.google.com/file/d/1NBD7qcEpjVhL9eIE8yOgeU0E98PhLWVw/view>, last visited on 12 October, 2021.

### 3. Interplay of news media businesses and digital platforms

9. Both digital platforms and news media businesses are in a symbiotic relationship. The former relies on the content produced by news media businesses to capture its users' attention, and then monetize web traffic through advertising services. The latter increases its content exposure through platforms' traffic and share advertising revenue with platform operators. Arguably, each seek mutual benefit and complement each other.

#### 3.1. Revenue decline in the news media industry

10. To understand why the rise of digital platforms has led to a revenue decline for news media is challenging. In terms of news websites, there are two possible explanations. One is that the decline is associated with decreased web traffic, which subsequently compromise advertisers' incentives to purchase advertising services offered by news websites. The other is that the number of paid subscribers has decreased as media consumption habits change. Even if the revenue decline in respect of internet business mainly comes from a reduction of advertising revenue, a further study is needed to ascertain whether the lost advertising revenue for news media has shifted exclusively to digital platforms, or if it has been shared with websites operated by other content providers.

#### 3.2. The impact of digital platforms on media independence

11. The common business models in online news media include advertising revenue and subscription fees paid by members. In a case where news media can share content-related advertising revenue generated from digital platforms, or even if such revenue becomes the main income source for news media, specific concerns on media independence may arise. For example, has the interaction between digital platforms and news media businesses been influenced by digital platforms' financial contributions? And can such contributions be considered as a *quid pro quo* for media independence?

### 4. Government's responses to issues relating to digital platforms

12. 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. To promote a coexistence of domestic industries and large digital platforms, a taskforce was established in 2021. It was convened by the Executive Yuan<sup>3</sup> to gather relevant governmental departments together, which include the National Communications Commission (NCC)<sup>4</sup>, Intellectual Property Office under the Ministry of Economic Affairs, the Ministry of Culture<sup>5</sup> and the Fair Trade Commission (hereinafter

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<sup>3</sup> Executive Yuan is the highest administrative organ in Chinese Taipei.

<sup>4</sup> The National Communications Commission is a regulatory agency for the telecommunications and broadcasting industries. Its missions involve public interest matters, which include safeguarding rights to which news industries are entitled, ensuring sustainable development of local journalism, and promoting quality in news content.

<sup>5</sup> The Ministry of Culture's mandate includes planning, guidance, rewarding and promotion of the publishing industry and print media.

referred to as CTFTC). The goal of this taskforce is to understand how other countries tackle these issues while exploring approaches applicable to the local context.

13. This multi-departmental taskforce has reached a conclusion on the allocation of responsibilities. Recently, the NCC and the Ministry of Culture have launched a series of public consultations to collect views from associations relevant to news media and other stakeholders to get a full picture of current cooperation models between news media businesses and digital platforms. The CTFTC is required to study the application of the Fair Trade Act, particularly cartel provisions on collective bargaining, exceptions and exemptions and procedural and substantial considerations in its enforcement.

## 5. Implications for competition policy and enforcement

14. The CTFTC 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. As the resolution of the issues associated with content licensing and payment negotiation between news media and digital platforms require interagency coordination, the CTFTC should first consider its role in the process of business negotiation between news companies and digital platforms. The CTFTC needs to determine whether a competition agency can intervene in a negotiation process for the use of news content between news media and digital platforms and whether a revenue decline in news media that can be attributable to digital platforms could justify the CTFTC's investigation.

15. News media is undoubtedly a content industry. In the digital era, media companies endeavor to undertake digital transformation. At the same time, they also seek opportunities to bargain about revenue sharing with digital platforms. Both parties in the negotiation process need to take into account respective operational efficiencies and dynamics of market competition. The government should avoid very hands-on approaches to protect news media, which may conversely erode fairness and impede the growth of media firms. Furthermore, over-enforcement can create overdependence on digital platforms, enabling digital platforms to become a must-have channel for news distribution.

16. Subject to the enforcement powers under the FTA, the CTFTC may step in under the following scenarios: (1) to grant a cartel exemption under the cartel provisions to allow news media businesses to collectively negotiate with digital platforms; (2) to launch an investigation under the provisions on dominance abuse into a case where a digital platform allegedly forces news media businesses to accept unfair licensing terms by refusing or postponing the negotiation, or removing URLs of news content.

### 5.1. Approval for cartel exemption

17. Article 15 of the FTA prohibits enterprises from engaging in any concerted action unless the CTFTC grants a specific exemption, which meets the criteria of any of eight statutory categories, and is found beneficial to the economy as a whole and in the interests of the public at large. The term “concerted action” (i.e. cartel) is defined as where enterprises at the same production and/or marketing stage jointly engage in any conduct through contract, agreement or any other form of mutual understanding, which would affect the market function of production or trade in goods or supply and demand of service<sup>6</sup>.

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<sup>6</sup> Article 14 of the FTA provides that “Concerted action as defined under the FTA, means competition enterprises at the same production and/or marketing stage, by means of contract, agreement or any other

18. As noted above, in addition to specific criteria based on each of the listed exemption categories, cartel exemption will be granted when it is “beneficial to the economy as a whole” (overall economic benefits) and “in the interests of the public” (public interest). The term “overall economic benefits” suggests that the benefits resulting from cartel exemption should go beyond the parties involved. An application of cartel exemption needs to ensure that such positive effects, including economic benefits can be shared with the trading counterparts and the general public in a reasonable way. The term “public interest” encompasses economic efficiency and other non-economic interest.

19. The CTFTC may approve concerted action if the following tests are satisfied: (1) whether implementation of the proposed concerted action is beneficial to the economy as a whole and in the interests of the public; and (2) whether restrictions imposed by the parties in the concerted action on market competition is essential and proportionate to the achievement of the above-mentioned overall positive effects.

20. The CTFTC will consider the nature of the proposed concerted action and its type, market power of the parties involved, and the impact of the concerted action on other competitors that do not engage in concerted action. On top of all these factors, the CTFTC needs to evaluate the impact of its approval on overall economic benefits and the public interest. Where it is necessary, the CTFTC can impose conditions and time limits when it approves an exemption. Exemptions are generally limited to 5 years. The parties involved can file a written application for extension with justifications. Applications should be filed no later than 3 to 6 months prior to the expiry date, and each extension period cannot exceed 5 years<sup>7</sup>.

21. In the news industry, if news media businesses attempt to jointly negotiate with large digital platforms to increase their bargaining power for revenue sharing, under the proviso of Paragraph 1, Article 15 of the FTA, they can apply for an exemption collectively, or their business associations can submit an application on their behalf. As discussed above, the CTFTC will review the proposed cartel exemption, and grant an authorization if it meets statutory requirements.

## 5.2. Abuse of dominance

22. The FTA contains specific provisions prohibiting abuse of dominance. According to the legal requirements of these provisions, the possession of market power or monopoly power itself is not considered unlawful. The FTA only prohibits a misuse of market power or monopoly power, which aims to impede or exclude competition and strengthen market

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form of mutual understanding, jointly determine the price, quantity, technology, products, facilities, trading counterparts or trading territory with respect to such goods and services, or any other behavior that mutually restricts business activities, resulting in an impact on the market function with respect of production or trade in goods or supply and demand of service.”

<sup>7</sup> Article 16 of the FTA provides that “The competent authority may impose conditions or undertakings in the approval it grants pursuant to the provisions of the preceding article. The approval shall specify a time limit not exceeding five years. The enterprises involved may, with justification, file a written application for an extension thereof with the competent authority within three to six months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed five years.”

position. A violation of Article 9<sup>8</sup> or Article 20<sup>9</sup> of the FTA can occur if a firm misuses its dominance or superior market position through any of the following conduct: unfairly preventing other businesses from competition; improperly setting prices of goods or services; giving a trading counterpart preferential treatment without justification, or engaging in other anticompetitive conduct, including boycotting, differentiated treatment, and unjustified vertical restraints.

23. If a digital platform operator misuses its superior or dominant market position in the process of negotiating with news media companies, such abuse of market power may violate the FTA. A situation where a digital platform with substantial market power requests news media businesses to accept unfair licensing terms by means of refusal to negotiate, negotiation postponement, or removal of news URLs is one such example. This can trigger the CTFTC's investigation to examine whether the digital platform's behavior represents a misuse of market power in violation of Article 9 or Article 20 of the FTA.

### 5.3. Sector inquiries into digital platforms

24. In response to high market concentration in the digital platform services sector, in July 2021, the CTFTC established a "taskforce for sector inquiries into large multinational digital platforms". This taskforce aims to broadly collect information with regard to the impact of these large multinational digital platforms on competition in domestic markets, and identify any conduct with potential anticompetitive effects, or any unfair business practices.

25. For interactions between news media businesses and digital platforms, the CTFTC will launch an inquiry into print media companies, news content providers and digital platform operators. The inquiry is designed to gather the following information: the level of digitalization in the news industry; how news media businesses cooperate with digital platforms and the degree of dependence on digital platforms. The inquiry results will help the CTFTC gain a better understanding of competition dynamics in the digital platforms markets, and then enable it to pinpoint potential concerns around the anti-competitive practices and unfair competition in the relevant markets.

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<sup>8</sup> Article 9 of the FTA provides that "Monopolistic enterprises shall not engage in any one of the following conducts:

1. directly or indirectly prevent any other enterprises from competing by unfair means;
2. improperly set, maintain or change the price for goods or the remuneration for services;
3. make a trading counterpart give preferential treatment without justification; or
4. other abusive conducts by its market power."

<sup>9</sup> Article 20 of the FTA provides that "No enterprise shall engage in any of the following acts that is likely to restrain competition:

1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise;
2. treating another enterprise discriminatively without justification;
3. preventing competitors from participating or engaging in competition by inducement with low price, or other improper means;
4. causing another enterprise to refrain from competing in price, or to take part in a merger, concerted action, or vertical restriction by coercion, inducement with interest, or other improper means;
5. imposing improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement."

## 6. Conclusion

26. The government recognizes the importance and complex relationships of news and journalism in the contemporary media environment. The issues between news media and digital platforms are closely related to 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.

27. As an independent agency, the CTFTC's mission is to maintain market order and competition rather than directly step in to business negotiations to create a revenue sharing mechanism between businesses. The CTFTC should not directly intervene in industry restructuring or revenue redistribution. From a pro-competitive perspective, efficient prices will be established by the market forces of supply and demand in most cases. That is, prices will rely on negotiated outcomes between individual businesses and platforms.

28. The CTFTC may take actions in the following scenarios: (1) where news media businesses file an application to the CTFTC for an ex-ante cartel exemption of a collective bargaining measure; (2) where a digital platform operator refuses to negotiate or postpone negotiating with news media company in the process of negotiation. In the latter scenario, the CTFTC will look further into whether the digital platform's behavior constitutes a misuse of market power in violation of the FTA.