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The News Media Bargaining Code (NMBC) problem

The Albanese Government is grappling with formulating a viable response to the policy failure of the NMBC, and therefore a sustainable alternative funding model for public interest journalism. *Meta* had announced earlier in the year that if would not renew their deals with Australian news publishers. *Google*, however, has been renewing deals including under their so-called Global News Initiative framework, in a very targeted manner. The total value of the deals struck by *Meta* and *Google* were claimed to be of the order of $600 million over a 3-year period. Yet the actual amount is unknown because there was no reporting mechanism in the law that set up the Code. As anticipated by many, the NMBC can be interpreted as a welcome but temporary revenue boost exercise for mainly the major Australian news publishers.

The grandstanding accompanying the implementation of the Code is arguably a characteristic of the government's approach to dealing with the operation of US tech platforms in Australia. Electorally it plays well, and there is certainly upside in supporting Australian news media publishers in the lead up to the federal election. Now the unintended consequences of the NMBC are already evident. The pressures to market concentration and reduced media diversity are underway with *Meta* walking away from these deals with news publishers.

We can expect to see more mergers and shuttering, particularly in less profitable regional and rural markets that are already severely affected by the 'news desert' closures. A number of submissions to the Joint Parliamentary Committee on Social Media and Australian Society noted detrimental impacts. For example, *Country Press Australia* noted that:

> There is no doubt that there would be fewer regional and local papers in Australia without the code (p. 66).

But there will be impacts in metro markets too. One early casualty is *The New Daily* (TND) in Adelaide. *TND*, an important progressive voice in general news reporting, has announced it has been put up for sale. One factor that has triggered the sale is the loss of revenue from its deal with *Meta*. The best-case scenario is that it will be bought by its own contract publisher, Motion Publishing. The worst case is that *Adelaide Now*, the News Corp online only masthead will consume *TND* and further concentrate the online news market. From News' perspective that would represent a sweet revenge merger: *TND* has published one too many stories that were critical of News Corp Australia.

But it's the large-scale job cuts at the major news organisations that have followed the non-renewal of the NMBC deals, together with the migration of advertising to US platforms, which highlight the real damage and failure of the Code. *News Corp Australia* and *Nine Newspapers* have cut hundreds of journalists including through voluntary redundancy offers.

To date there has been little recognition or understanding that the NMBC was ever going to be able to achieve greater diversity in the Australian media. The competition law underpinnings of the NMBC were simply not focused on the serious informational consequences of media concentration. (It's worth noting that the legal source of the NMBC are the Government's Competition and Consumer laws via an amendment to the Competition and Consumer Act 2010 — the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021).

A significant result arising from the application of competition policy discourses is that little or no serious attention is given to the alternative, traditional media regulatory policy discourses that focus on achieving greater media diversity in Australia. This absence of media policy means there are key knowledge gaps in contemporary regulatory thinking. Competition law and policy is generally less successful in its treatment of news media particularly in relation to media diversity or voice pluralism. The NMBC did not plan for the social responsibilities of platforms in terms of news or platform algorithms. The main concern was with 'saving' legacy news organisations not with democratic values or facilitating a well-informed citizenry. There is no implicit social contract aspect which says, 'these are the social responsibilities we expect of you as a result of your participation in this market.'

Media reforms for sustainable public interest journalism

Media reform gets very little attention these days and granted, modelling sustainable journalism is a hard nut to crack. The 500,000 plus signatures on an e-petition garnered in support of a Royal Commission into Murdoch media and the important ongoing work of Australians For a Murdoch Royal Commission are testament to the need for serious policy reform in Australia. AFMRC commissioned research into how *News Corp* fuelled the divisive 'No' campaign is unambiguous. The headline finding was that News Corp's coverage of the Voice constituted an overt political campaign in favour of a 'No' vote. Evidence indicated:

News Corp produced a greater volume of commentary (opinion) than it did reporting (news) about the Voice. Across the print publications, commentary and op-eds made up 54% of Voice coverage and on *Sky News* commentary made up 68% of content.

Another key finding was that:

> News Corp's coverage played a singular role in the broader anti-Voice misinformation ecosystem, with Sky News being responsible for the most egregious examples.

How will the Albanese government respond to the policy failure of the NMBC? 'Designation' of *Meta* (the mechanism which triggers the application of mandatory bargaining) is very unlikely given the predictable outcome will be pulling professional news from the platform. The pole position idea appears to be a form of levy to support traditional news publishers, which platforms would be required to make payments into if they wish to operate in Australia. This kind of levy would be recognising how the US platforms are a form of privatised communications infrastructure in Australia on which the public is semi-dependent. The key advantage of this form of funding mechanism is that it could be proportionate based on advertising spend and allow the purposes of the funding to be specifically articulated and transparently disclosed. My colleagues at the University of Sydney have come up with a suggested model given the outsized role of Google relative to Australian news publishers. The idea is that, broadly based on current figures, *Alphabet* (Google's parent company) and *Meta* (which owns *Facebook*, *Instagram* and *WhatsApp*) would contribute about 70% of the levy. The attraction of this model is that such a levy wouldn't be contingent on the value of news to the overall platform.

This suggestion has now been picked up by the Joint Parliamentary Committee on Social Media and Australian Society in its second interim report where they recommend the government:

> … explore alternative revenue mechanisms to supplement the Code, and contribute to systems oversight, such as a digital platform levy. Exploration should include consideration for preserving current and future commercial deals to sustain public interest journalism over the longer term, and to support digital media literacy initiatives. (3.162).

Another recommendation is that the government implement a mechanism and protocols for:

> … fair and transparent distribution …to ensure the sustainability of small, independent and digital only publishers, as well as those operating in underserved communities and rural, regional and remote areas. (3.163).

Other interesting recommendations are that the government investigate 'must carry' (echoing historic telecommunications rules) for digital platforms in relation to Australian news content from large and small news providers, and a 'digital media competency fund'. Funded separately to a digital platform levy, such a fund would have a:

> strong focus on the digital media literacy of young Australians" and other vulnerable groups at risk from mis- and disinformation, including older Australians and those living in regional areas. (3.167).

Now whether any of these recommendations translate into law and policy remains to be seen, but it has certainly been squarely placed on the agenda by this Committee.

More ownership restructurings in Australian Media

ARN Media, the ASX-listed company that owns *KIIS* radio networks, including that dubious shocker The Kyle and Jackie O Show, made a failed bid for *Southern Cross Media* last year, but continues to try to acquire the network. It's reported that *ARN* is hopeful that The Kyle and Jackie O Show, launched in Melbourne in April, will build a fan base and contribute to *ARN's* bottom line. Not only would a merger reduce news diversity through a loss of existing *Southern Cross* stations, but it would contribute to further concentration in the upstream media interests of the major shareholders of *ARN*, including *News Corp*, *Seven West Media*, and *Grant Broadcasters*. Should *ARN* achieve their objective they'll have strung together *KIIS*, *Triple M*, a larger group of regional radio networks. Their bid to control *Southern Cross Media* was made with the private equity firm, *Anchorage*, which if it succeeds would bring the Pure Gold and Hit networks, some regional radio assets and *Southern Cross*' network of 96 TV stations. They would jointly co-own a digital audio platform.

Network Ten is now owned by Larry Ellison, 'the world's fourth-richest man and co-owner of software firm *Oracle*' (*AFR*, Buckingham-Jones, 7-8 September 2024) after a group led by his son David Ellison completes its deal to takeover Ten's parent company, the media giant, *Paramount Global*. Paramount owns *CBS* which bought Ten back in November 2017. Who knows whether we'll continue to see more *Master Chef Australia*, *The Project* and *Thank God You're Here* under the new owners.

Finally, *News Corp Australia* is reported to have Foxtel up for sale. The buyer is not publicly known at this stage but there's speculation it could be an incumbent broadcast video on demand player (*Nine Entertainment* or *Seven West Media*) or a private equity firm. *Foxtel* has faced tough competition in recent years from *Stan*, and more comprehensively from the US streamers *Netflix*, *Disney+*, *Paramount Plus* and *Amazon*. Another sale factor is that video consumption habits have changed considerably, particularly among younger viewers who now tend to graze on *YouTube*, *TikTok* and *Instagram* for entertainment, news and information more broadly. Selling *Foxtel*, a significant feature of Australia's media landscape, might signal further realignments on their way for audiences.

About the author

Tim Dwyer is an internationally known expert and one of Australia's leading authorities on media policy. He is the recipient of five *Australian Research Council* (ARC) funded grants and is currently a chief investigator on the ARC Discovery Project 'Valuing News: Aligning Individual, Institutional and Societal Perspectives' (2023-2027). His latest book (with Derek Wilding, 2023) is titled Media Pluralism and Online News: The Consequences of Automated Curation for Society. From February 2025 he joins Charles Sturt University as Professor of Communication.

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