

Submission to the Treasury *News Bargaining Incentive* Consultation Paper

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Dear Competition Policy Unit,

We submit this response to the Treasury’s Consultation Paper on the *News Bargaining Incentive* as academics specialising in innovation policy, technology regulation, and digital platform economics.² Our submission addresses both the fundamental premises of the *News Bargaining Incentive* and some specific implementation issues raised in the Consultation. While we recognise Treasury’s focus is on implementation details, we believe it essential to question whether the policy instrument itself is appropriate for the stated objectives. The *News Bargaining Incentive* applies an inappropriate and intrusive policy instrument to a structural business model transition, mischaracterising the relationship between digital platforms and news media businesses.

The *News Bargaining Incentive* is now neither about *bargaining* nor, in any meaningful sense, about *news*. The arrangements it produces are compelled financial transfers from large global digital platforms to incumbent domestic news media organisations. These transfers are imposed and distributed by technocratic regulatory design; they are not ‘bargains’ which implies voluntary agreement for mutually beneficial exchange. The effect is a targeted and punitive redistribution that seeks to sustain existing news business models rather than encourage adaptation, innovation, or long-run economic dynamism. By applying “irrespective of whether or not [platforms] carry news”, the policy’s own design severs any coherent link between payment and the use of news content. Indeed, as one of us has written elsewhere, the “news bargaining incentive is a bespoke corporate tax specifically structured for efficient rent-

¹ The authors are with RMIT University. They provide this submission in their personal capacity.

² News Bargaining Incentive Consultation Paper, November 2025, Link: <https://consult.treasury.gov.au/c2025-718159>

seeking”.³ A more accurate description of the *News Bargaining Incentive* would therefore be a *Digital Platform Advertising Tax*.

Design choices in the *News Bargaining Incentive* will of course have broader implications for Australian and global market behaviour. Treasury notes that its design must balance certainty, administrability, and the risk of unintended consequences. The Consultation Paper emphasises the need for clear and calculable thresholds, predictable liabilities, and minimising regulatory burden. We accept and appreciate that these considerations motivate the proposed design choices. Yet our concern remains that even the pursuit of administrative certainty comes at the expense of dynamic efficiency, and that the policy *itself*, regardless of the specifics of its implementation, creates the uncertainty, difficulty in administration and unintended consequences that Treasury seeks to avoid. In fast-moving digital markets, design choices can distort entry, innovation, and business model evolution in ways that are not captured by the Consultation Paper’s framework.

One of the many underlying premises of the *News Bargaining Incentive* is the claim that digital disruption of the advertising industry has created a power imbalance between digital platforms and news businesses that warrants regulatory correction. We do not agree. There was no bargaining problem prior to government intervention because there was no underlying transaction over which bargaining could or should occur. Linking to news content does not constitute appropriation or acquisition of news content, nor does it displace publishers’ property rights. Characterising fundamental internet functions as compensatable commercial transactions is a significant departure from established internet architecture and property rights frameworks. Hyperlinks do not transfer content, copy content, or prevent publishers from controlling access. Publishers retain complete autonomy over whether and how their content appears on platforms. The claim that platforms ‘use’ news content in a way that requires compensation conflates the value of directing audiences to content with the value of the content itself.

Treasury states that digital platforms have “used news content to drive traffic on their platforms”, while news businesses have become reliant on platforms as distribution channels.⁴ This describes a complementary relationship, not a zero-sum exchange. Publishers

³ Chris Berg (2025), ‘An incentive (in the Canberra sense)’, *Substack*, 13 November, <https://chrisbergaus.substack.com/p/an-incentive-in-the-canberra-sense>. See also Chris Berg (2020) ‘Australia’s Confused Tech Regulators Are Cracking Down on Google for Using Links’, *Reason*, 10 September, <https://reason.com/2020/09/10/australias-confused-tech-regulators-are-cracking-down-on-google-for-using-links/> and Chris Berg (2024), ‘No — taxpayers should not bail out journalism. They do so already!’, *Crikey*, 23 August <https://www.crikey.com.au/2024/08/23/friday-fight-chris-berg-no-subsidies-journalism-abc-sbs/>

⁴ Consultation Paper, p. 4.

retain full control over their content and monetisation strategies, including subscriptions, advertising, and paywalls. That one business benefits indirectly from the existence of another does not imply exploitation or loss requiring compensation.

In practice, the *News Bargaining Incentive* operates as a coerced targeted transfer from a small number of large digital firms to incumbent news organisations. Indeed, referring to the News Media and Digital Platforms Mandatory Bargaining Code, the Introduction of the Consultation Paper argues:

While it has been successful in creating deals between digital platforms and news businesses, the code can only apply to digital platforms that carry news on their services. In practice this means that, without further incentive, a platform withdrawing news entirely from its service would render designation under the code ineffective (as there would be nothing to negotiate or arbitrate over).⁵

The fact that the latest proposal will apply “irrespective of whether or not they carry news” further demonstrates this coercive and contradictory nature of the Incentive.⁶ If the Government proceeds, the specific design choices outlined below will significantly affect both immediate market outcomes and long-term dynamic effects on innovation and competition. Our implementation comments aim to minimise harm where the underlying policy framework is itself problematic.

Implementation concerns and unintended consequences

Here we address two main implementation concerns in the proposal:

1. the dynamic and distortive effect that a threshold approach will have on the decisions of adjacent business models; and
2. the mandating of funding to a diversity of media outlets.

Dynamic impact on adjacent business models

The Treasury’s consultation focuses heavily on defining scope, thresholds, and regulatory mechanics. This approach is fundamentally static, concerned with existing business models and their current operations. While the Treasury notes the need for “flexibility in its scope and

⁵ Consultation Paper, p. 4.

⁶ Stephen Jones and Michelle Rowland (2024), ‘Albanese Government to establish News Bargaining Incentive’, 12 December. Link: <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/albanese-government-establish-news-bargaining-incentive>

operation” there should be greater emphasis on the distortive dynamic effects.⁷ The decisions made in this policy will shape decisions about which business models firms will pursue, enter, or abandon. For instance, regarding the scope of the incentive, the Consultation Paper notes:

It is intended to specifically exclude services that do not generate significant digital advertising revenue and/or have no or limited links to news media and thus have a lower impact on the viability of news businesses in Australia.⁸

As the policy currently reads, Australia will penalise a specific business model that is some combination of (1) being a digital platform; (2) generating significant revenue in Australia; and (3) significant digital advertising revenues; and (4) maybe linking to news content.

Consider establishing and emerging business models such as generativeAI (e.g. ChatGPT, Gemini). Some of these services are currently (1) digital platforms; (2) link to news content; and (3) may have large revenues in Australia. The proposed policy would presumably be disincentivised to incorporate advertisement-supported revenue models in Australia. If they pursue advertising-supported strategies, they may trigger the bargaining obligation, with potentially hundreds of millions of dollars in liability. Viable business models incorporating news integration are effectively discouraged from pursuing advertising support, not because the model is unviable, but because the regulatory cost becomes prohibitive. The incentive structure works against, not for, the emergence of new competing platforms and services.

Firms will respond by making strategic decisions to avoid regulatory exposure: entering or exiting markets, redesigning business models, or excluding news integration or advertising entirely. If viable business models that would include news integration are abandoned or redesigned to exclude it, innovation and competition suffer. These dynamic responses bias the landscape toward regulatory avoidance. The incentive thus operates as a barrier to entry for exactly the type of innovative platforms that might otherwise challenge any perceived digital platform competitive dominance or create new distribution channels for news publishers. The current approach to the *News Bargaining Incentive* attempts to create a two-sided market (platforms and publishers) but ignores how the policy affects the evolution of that market structure. By raising the cost of entering markets with both news and advertising, the policy may inadvertently protect incumbent platforms from competitive pressure while simultaneously discouraging new publishers from emerging business models that rely on platform distribution.

⁷ Consultation Paper, p. 5.

⁸ Consultation Paper, p. 6.

Don't mandate deal diversity and balance among news businesses

The Consultation Paper states that “Guardrails are needed around the distribution of commercial deals among news businesses”, preventing a digital platform from fulfilling its obligations through a single or small number of large deals with news publishers.⁹ Not only are guardrails inappropriate, but even asking the question of “ensuring balanced distribution” reveals the policy’s core tension: if commercial negotiations are genuinely commercial, regulators should not prescribe their outcomes. If outcomes require prescription, the negotiations are not commercial – they are administered transfers.

Treasury correctly notes that “mandating a minimum number [of deals] is not... viable” because it would “unduly interfere with commercial bargaining.” Putting aside that agreements under this policy only exist because of ‘interference’, this logic extends to all mandated distribution requirements including a “proportional cap on the maximum value of the largest deal”.¹⁰ A proportional cap on large deals is simply a minimum deal count requirement in disguise, forcing platforms to spread funding across more recipients regardless of commercial rationale. Platforms should allocate support based on their assessment of value and sustainability. Mandated diversity channels resources to outlets irrespective of audience demand or content quality, creating perverse incentives.

Concluding remarks

The *News Bargaining Incentive* reflects a fundamental policy error. It attempts to correct a misdiagnosed problem by imposing pressure on a narrow class of firms, treating a structural transition in media business models as if it were a bargaining failure.

The Consultation Paper’s focus on thresholds, deductions, caps, and scope illustrates the difficulty of administering a policy that lacks a coherent economic foundation. Each additional design layer introduces new distortions, increases compliance costs, and amplifies incentives for regulatory avoidance. Most importantly, these design choices shape future market behaviour in ways that disadvantage innovation, deter entry, and bias the evolution of digital markets toward incumbency rather than competition.

We therefore urge the Government to reconsider the *News Bargaining Incentive* in its entirety. If the objective is to support “a strong and diverse news sector” that “is vital for a healthy democracy”, that objective should be pursued transparently and directly, through instruments

⁹ Consultation Paper, p. 13.

¹⁰ Consultation Paper, p. 14.

that are accountable to Parliament and taxpayers, rather than through opaque and coercive transfers embedded in competition policy.¹¹

If the Government nevertheless proceeds, then the implementation choices now under consideration will have lasting consequences well beyond the immediate parties to the scheme. In that case, narrow scope, minimal prescription, and a clear recognition of dynamic effects are essential to limiting harm. Even then, it should be recognised that no implementation framework can remedy the core flaws of the policy.

Regards,

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¹¹ Consultation Paper, p. 4.