



## AMERICANS *for* TAX REFORM

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### Comments of Americans for Tax Reform and Digital Liberty

#### RE: News Media and Digital Platforms Mandatory Bargaining Code

Americans for Tax Reform (ATR) is an organization dedicated to the education and protection of American taxpayers in the United States and around the world. Digital Liberty is a sister organization of Americans for Tax Reform that advocates for free market technology and telecommunications policies in the United States and internationally.

We appreciate the opportunity to provide comments on the News Media and Digital Platforms Mandatory Bargaining Code. The following comments summarize our position of the News Media and Digital Platforms Mandatory Bargaining Code.

Perhaps no industry in history is as dynamic and as innovative as today's tech industry. Digital markets are constantly evolving to deliver products and services to consumers—often at no cost to users. In the current ongoing global pandemic, users are relying on these products and services even more to stay informed and stay connected to colleagues, family, and friends.

Like digital taxation proposals and efforts to “reform” antitrust laws, the News Media and Digital Platforms Mandatory Bargaining Code exclusively targets and discriminates against American companies. These efforts are part of an increasingly global campaign to tax American technology companies, restrict their market access and further erect barriers to free markets.

#### **The Australian Parliament's mandate is to protect Australian consumers and not to protect and promote favored competitors to American companies.**

The News Media and Digital Platforms Mandatory Bargaining Code looks past the successful innovation of digital companies that enhanced and democratized the proliferation of access to sources that provide news and information. The purpose of major digital companies is to make the world's information accessible and useful, that means delivering trusted, reliable, factual information to the more than 20 million Australians who use those services on a daily basis.

These success stories that allow both search and the quantities of available news and information to all consumers together should not be punished for their innovation by forcing them to subsidize less successful media platforms.

For instance, currently Google does not discriminate between “news content” in search results. The News Media and Digital Platforms Mandatory Bargaining Code would have the company, and any other the Treasurer determines with little oversight, to provide “registered news businesses” with special treatment to game search results. No government should be given control over which news companies are more available

to its citizens. Democratic governments engaging in this level of control over who and what is newsworthy is a dangerous game.

The News Media and Digital Platforms Mandatory Bargaining Code is premised on the faulty assumption that there exists a “bargaining imbalance” between the digital platforms and certain news outlets. The “bargaining imbalance” is hardly demonstrable. For instance, Google doesn’t monetize Google News searches and many clicks to news links in Australia from Google Search aren’t from advertisements. [Google estimates](#) that in 2018 Google Search “accounted for 3.44 billion visits to large and small Australian news publishers for free.”

Forcing affected companies to pay to show links would lay the groundwork to fundamentally break how search engines work. Imposing an obligation on certain American companies to pay news publishers because links to their content appear in search results or in their platform feeds is entirely unworkable and undermines the key benefits of the internet. Search engines use snippets to make it easy for people to discover content they are searching for and to drive traffic to news sites. No website and no search engine pays to connect people to other websites, yet the News Media and Digital Platforms Mandatory Bargaining Code would force targeted companies to include and pay for links to Australian news websites in search results, undermining the authority and integrity of Search results.

Clearly, a digital presence and digital ads have allowed especially small and medium sized businesses access to a much wider audience at significantly lower costs. This top-down management of the digital marketplace for news will dial back the competitiveness and innovation that have allowed news sites to succeed.

The News Media and Digital Platforms Mandatory Bargaining Code imposes a biased arbitration model that does not require the arbitrator to consider comparable market arrangements to determine a market price based on evidence. A balanced assessment of the value exchange between platforms and publishers is also not required.

The ability to link freely is a fundamental principle of an open internet, yet the News Media and Digital Platforms Mandatory Bargaining Code’s arbitration provision assumes that the internet has never required payments for links because of ‘bargaining power imbalance’. The biased and unbalanced arbitration provision also requires the decision-maker to choose between two ‘final offers’. This is an extreme, unusual arbitration model that denies fundamental principles of fairness and good faith and it appears to be specifically designed to guarantee that an arbitrator will always determine that significant revenue should be transferred from American companies to publishers.

If the News Media and Digital Platforms Mandatory Bargaining Code became law, there would be no downside or risk for publishers to force negotiations to arbitration knowing of their strong position to make demands for payment. The arbitrary nature with which the Government identified U.S. based Google and Facebook to be subject to the Code significantly erodes the national

treatment obligation in the General Agreement on Trade in Services. Australia must provide all foreign service suppliers the same opportunity to compete in Australia as their Australian competitors enjoy. Australia is clearly creating separate rules for successful foreign tech companies that are onerous and designed to limit their competitiveness.

Ultimately, these measures will result in the opposite of their intention: a decrease in the visibility and access to Australian news sites. That has been the result in [Germany](#) and [Spain](#) after those countries have imposed similar measures - traffic to news sites reduced drastically and especially harmed smaller publishers.

The News Media and Digital Platforms Mandatory Bargaining Code also forces digital companies to subsidize traditional Australian media outlets, and Australia's small and medium-sized businesses, along with their readers will suffer for it in terms of access and visibility of available news services.

Small and medium sized local businesses will bear the brunt of the financial costs as the retailer that advertises on Google or the family restaurant that advertises on Facebook will face higher advertising costs to subsidize an industry that refuses to compete on the same playing field as its direct competitors, and every other business that appears in Google search or in Facebook news feeds.

Furthermore, the News Media and Digital Platforms Mandatory Bargaining **significantly erodes the national treatment obligation in the General Agreement on Trade in Services with an unworkable regulatory scheme with unforeseeable consequences. It is clearly intended to target American companies, Google and Facebook.**

The News Media and Digital Platforms Mandatory Bargaining applies only to Facebook and Google—creating a precedent that regulators have a role in choosing winners and losers in the economy. Antitrust and competition policy should protect the competitive process, not pick winners and losers – protect competition, not competitors. With the News Media and Digital Platforms Mandatory Bargaining, a clear message that aggressive competition and disruptive innovation will later be punished by government overreach, all at the expense of consumers, was sent.

By replacing competition with a burdensome regulatory regime, the News Media and Digital Platforms Mandatory Bargaining would reduce innovation and growth in the digital sector, all while creating an enormous bureaucratic burden for two politically disfavored companies. And by discriminating against American companies, Australia risks a spiral of retaliation in trade and a worsening of the relationship with the United States.

The News Media and Digital Platforms Mandatory Bargaining is misguided and dangerous. The costs of getting this wrong are too high, and we ask to reevaluate the News Media and Digital Platforms Mandatory Bargaining and consider the arguments presented in this paper.

Respectfully Submitted,

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