

Changes to News Media Bargaining Code

The following changes are needed to make the News Media Bargaining Code workable.

1. Designation

- a. News Showcase should be designated for negotiation and arbitration under the Code (Google is opposed to any requirement to pay for links and snippets in Search, Search could be designated for the purposes of the minimum standards).
- b. If Google were to fail to make News Showcase (or equivalent) available, the designation powers of the Treasurer would remain. This motivates Google to continue to invest in News Showcase.

2. Arbitration

- a. The arbitration **criteria** should be fair and consistent with normal commercial arbitration processes.
 - i. Arbitrators should consider comparable transactions, as is standard practice in commercial arbitration.
 - ii. An arbitrator's decision should be based on fair market rates, **not** on the costs of the publisher or the digital platform.
 - iii. The value of the traffic digital platforms send to news publishers should not be ignored. (This requires deletion of Example 1.7 in the Treasury's explanatory materials.)
- b. The form of the arbitration **process** should be fair and consistent with normal commercial arbitration processes. To ensure speedy resolution of claims, the Code could include a maximum period for arbitration.
 - i. Arbitrators should not be forced to choose between contending offers in final offer arbitration, particularly given the unbalanced nature of the current criteria.
 - ii. The ACCC should not be given a role that enables it to take sides for either party or favour or oppose any specific offer. (The ACCC could be available to provide research about the industry to the arbitrator.)
 - iii. Arbitrators should be appointed by an independent commercial organisation (such as ACICA, which regularly appoints commercial arbitrators), not by the Government (ACMA).

Normal market practice would require that the Government provide for standard commercial arbitration under the Code, however if the Government is committed to final offer arbitration, then the arbitration criteria would need to be based on like and comparable transactions only, and the arbitration process would need to be independent of ACCC influence and with arbitrators appointed by a body such as the ACICA.

3. Notice of algorithm changes

- a. A platform cannot necessarily predict the effect of its changes on any specific news publisher's traffic, particular articles, or distribution of advertising, so a platform should only be required to give notice of algorithmic changes a publisher can address or mitigate in ways that do not deceive or otherwise harm consumers.
- b. The obligation to notify changes to 'internal practices' is unmanageable and should be deleted.