

News Corp Australia

**SUBMISSION TO THE
AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION**

DIGITAL PLATFORMS INQUIRY
ISSUES PAPER

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Executive Summary

News Corp Australia appreciates the opportunity to make a submission to the Australian Competition & Consumer Commission (ACCC) Digital Platforms Inquiry Issues Paper. An inquiry of this nature is of fundamental importance to the future of news and journalism in Australia.

The internet has enabled consumers to access and engage with news and journalism in new and innovative ways. Publishers can break news as it happens, update content as new information emerges, link to other articles, offer access on multiple devices and allow readers to comment on and share articles.

News Corp Australia has embraced the digitalisation of news and journalism and has been at the forefront of adapting printed media to the online environment. However, digital platforms increasingly intermediate the relationship between publishers and consumers and exert enormous influence on how consumers access and engage with news content.

A number of digital platforms possess substantial market power and are engaging in anti-competitive practices that prevent publishers such as News Corp Australia from competing on the merits. These practices have the potential to profoundly damage the creation, distribution and consumption of news and journalism in Australia for:

- **Consumers** – digital platforms are reducing the choice and diversity of original and quality news and journalism, undermining the ability of consumers to assess news sources, and prioritising unreliable content; consumers are also facing significant incursions on their privacy with digital platforms harvesting increasing amounts of personal data for commercial purposes;
- **Publishers** – digital platforms are subverting access to online revenue streams (subscription and advertising), which is undermining the sustainability of news and journalism as a private enterprise, leading to widespread cost-cutting in newsrooms and reduced incentives to invest in quality journalism; and
- **Advertisers** – the dominance of digital platforms, particularly in relation to programmatic advertising, and their control over the advertising supply chain is leading to less choice and higher prices. At the same time, advertisers too often find their brands placed in unsafe online environments, such as alongside extremist or other unsavoury sites.

The key issues we discuss in this submission are:

Consumer detriment The anti-competitive practices of digital platforms detailed in this submission have increasingly been leading to widespread consumer harm. Publishers of news and journalism perform an important democratic function by disseminating information, undertaking investigation and analysis, presenting different perspectives, providing opportunities for public debate and advocating for change. Moreover, most publishers are from, and responsible to, the communities they serve; their journalism is gathered in an ethical manner, properly edited, and accountable to the public. Publishers are able to receive complaints and correct errors when they occur. In contrast, the digital

platforms are far removed from local communities, and have proven to be unresponsive to criticism and unaccountable for errors, which has led to the proliferation of false and harmful content across the internet.

Digital platforms are engaging in various practices that undermine the business models of publishers, making it increasingly difficult for them to offer original and quality news and journalism to consumers.

Digital platforms seek to attract and retain consumers on their platforms so they can collect highly personalised data to market for commercial purposes. The algorithms used by digital platforms are designed to optimise engagement by showing content consumers are more likely to interact with. This is leading to 'echo-chambers' where consumers are increasingly exposed to opinions that confirm and do not challenge their existing views and values. Further, digital platforms have made it harder to identify the news brand which is publishing the article, and whether it is the original source of the content. This has hampered consumers' ability to assess provenance and led to a proliferation of fake news.

While the services offered by digital platforms appear to be 'free', they come at a significant cost, in terms of intrusive data collection and increased exposure to advertising. It is clear from the controversies over various data breaches by the dominant digital platforms that consumers are increasingly concerned about the price they are paying to access these 'free' services.

Relevant markets and sources of market power

Digital platforms bring together an array of associated markets that impact on the creation, distribution and consumption of news and journalism. These markets are interconnected, with a consumer-facing service often offered for 'free' but tied to a companion service or services that are remunerative, in particular the collection and marketing of user data and the exposure to digital advertising.

While 'free' services superficially appear beneficial to consumers, they have the potential to create negative effects on both competition and welfare, particularly when the remunerative companion services are taken into account. In particular, the attraction of consumers to 'free' services leads to market power in the supply of the tied companion services and compounds the foreclosure effect on competitors in the 'free' market and the remunerative market.

Market power

A number of digital platforms possess substantial market power, including in the markets for general search, social media and mobile device operating systems, in particular:

- Google, which has a market share of 95 percent of the search engine market and over 50 percent of the mobile device operating system market in Australia;

- Facebook, which has a market share of 80 percent of the social media market in Australia; and
- Apple, which has a market share of around 40 percent of the mobile device operating system market in Australia.

Digital platforms are also leveraging their market power into emerging markets (in particular, smart home, voice, video and artificial intelligence) and undertaking aggressive merger and acquisition activities to entrench their dominance.

While these data-driven intermediaries position themselves as free 'neutral gateways' merely assisting the facilitation of content to consumers, digital platforms are in fact hugely profitable corporate entities driven by selling advertising and, to that end, harvesting vast amounts of user attention and data.

Excessive intermediation

Digital platforms are using their market power to entrench their role as intermediaries between publishers and consumers and to ensure that they remain *the* gateway to the internet. The aim of digital platforms is to arrogate content from publishers and retain users within their own ecosystems, since every consumer lost to another website, even to content providers, is ultimately lost revenue for the platform: less data is harvested and less advertising is sold.

Digital platforms therefore have an incentive to use their market power to attract consumers to their ecosystem in the first instance – by the use of opaque algorithms, scraping, crawling and extracting snippets of content – and then to retain consumers within their ecosystems and ensure they return as often as possible. Enhanced consumer engagement enables digital platforms to harvest more user data, which enriches the data available to sell to advertisers. Meanwhile, content creators, such as publishers of news and journalism, are deprived of the opportunity to monetise their content by selling subscriptions or advertising.

Excessive intermediation is leading to fragmentation of news content and brand dilution. The effect of digital platforms on publishers' bottom line is ultimately reduced incentives to invest in original and quality news and journalism.

Unfair trading terms

Having entrenched their role as intermediaries between publishers and consumers, digital platforms are now 'unavoidable trading partners' for publishers and other producers of content seeking incoming traffic to their websites. Consequently, these platforms seek to remove or disintermediate other vertical or adjacent businesses through their ability to coerce publishers to accept terms of trade, 'standards' and 'policies', such as Google's First Click Free and Accelerated Mobile Pages, Facebook Instant Articles and Apple News,

that assist their business models and undermine those of publishers.

Publishers that seek to resist the terms of access to a digital platform are penalised by demotion or exclusion from the platform, resulting in an immediate deterioration in referral traffic. Those that comply with the terms of access are experiencing intense pressure on margins.

Tying of advertising services, particularly Ad-Tech

Digital platforms offer advertising services to both advertisers and publishers across the internet and have developed advertising technology that allows them to control both the supply of and demand for digital advertising.

Advertisers seeking the greatest impact for their campaigns are increasingly attracted to the sheer scale of the datasets and alleged analytical capabilities of the digital platforms. As advertising spend shifts away from direct to intermediated trading, publishers are left with little choice but to outsource the sale of their ad inventory to the platforms.

This serves to increase the market power of digital platforms by creating a walled garden or closed market entirely within their control. Digital platforms then tie or bundle their advertising services together (eg, Google's AdX and DoubleClick for Publishers) or integrate services (eg, Google's Accelerated Mobile Pages software and its advertising technology services), so as to extend their dominance across the entire digital advertising supply chain and foreclose competition from publishers.

Refusing to supply

Digital platforms subvert publishers' opportunities to access valuable data on consumers that can be used to understand reader preferences and inform targeted advertising, for instance by displaying publishers' content within their ecosystems and by using engagement data to sell subscriptions on behalf of publishers. This gives digital platforms primary access to user data and creates a relationship of dependency between platforms and publishers.

Despite having access to vast troves of data, digital platforms refuse to supply publishers with adequate data or otherwise compromise interoperability so that publishers remain at a competitive disadvantage.

The purpose of this submission is to highlight concerns with the practices of digital platforms and their impact on competition and consumer welfare. In terms of whether future regulation is required, News Corp Australia has not formed a final view. Current laws *may* be sufficient to deal with our concerns. However, it may also be the case that some further legislative, regulatory and/or policy intervention or changes are required to address the negative impacts of the platforms on news and journalism such as establishing an Algorithm Review Board to analyse and remedy algorithmic distortions of competition and designate the digital platforms as publishers/broadcasters to remove their incentives to distribute lower quality content. News Corp Australia would be happy to engage with the ACCC and other stakeholders on this issue as the Inquiry progresses.

This submission is structured as follows:

Section	Description	Issues Paper
Section 1	Scope of the Inquiry	1.1-1.6
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Section 1: Scope of the Inquiry

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|-----|---|
| 1.1 | Which digital platforms do you consider to be relevant to this Inquiry? |
| 1.2 | Should the Inquiry consider digital platforms that do not currently provide access to news and journalistic content in Australia but may either provide news and journalistic content in the future and/or have an impact in relevant markets (e.g. Amazon, instant messaging applications)? |

We submit that all digital platforms that distribute news and journalism, or are capable of doing so, are relevant to this Inquiry. Of particular relevance to News Corp Australia are those digital platforms that have market power and the ability and incentive to leverage that market power into associated markets, namely:

- **Alphabet**, including Google search, Google News, Android, Google Play, YouTube, Chrome, AdSense, AdWords and DoubleClick
- **Facebook**, including Instagram, WhatsApp and Messenger
- **Apple**, including iOS, Safari, Apple App Store and Apple News
- **Twitter**
- **LinkedIn**

Additionally, we believe the Inquiry should investigate the impact of news aggregation services on the creation of news and journalism. These platforms do not originate content but rather use algorithms and web crawlers to scan the internet, occasionally with manual editorial review, and then present relevant content to users and sell advertising space on their websites or applications. These aggregation services include Flipboard, Reddit, Medium.com, SmartNews, Feedly, Inkl, and News360.

As well as the above platforms, the Inquiry should consider digital platforms that do not currently distribute news and journalism but have the potential to do so in the future. This is particularly the case in a sector which is dynamic and subject to rapid growth. It is also consistent with competition theory, which adopts a forward-looking analysis and considers actual and potential competitors as relevant to the competitive process.

Digital platforms tend to initially specialise in a particular segment, such as search (Google), social media (Facebook), e-commerce (Amazon) and devices and applications (Apple). Once the digital platform has established market power in a particular segment, it seeks to leverage that power into associated markets and thereby extend its dominance. The aim is to enhance user engagement on the platform so as to access more user data and sell more online advertising. For example, Google and Facebook have expanded from their initial service offering (search and social media) into other activities, such as instant messaging, video content and, importantly for the Inquiry, the distribution of news and journalism. It is our expectation that other digital platforms will adopt similar leveraging practices in the future.

On this basis, the following digital platforms are also relevant to the Inquiry:

- **Amazon**, including Kindle, Book Depository, Audible and Amazon Prime. Amazon has established a strong position in the e-commerce space and is increasingly providing content services, with Amazon Video;

- **Netflix**, which has established a strong position in the supply of video streaming. Netflix has aggressively marketed its in-house productions and we expect Netflix to become a major supplier of news and journalism in the future; and
- **Spotify**, which has established a strong position in the supply of audio streaming. With the rise of audio search, audio news and podcasting, there is potential for audio services to have an impact on the distribution of news and journalism in the future. Competitors to Spotify include Apple Music, Soundcloud, ACast, Stitcher and Whooshkaa, which are also relevant to the Inquiry.

Additionally, the Inquiry should take into account products and services that are currently being developed by the dominant platforms. As described in detail further below, the dominant platforms are using their market power to expand into new areas, foreclosing potential competition and entrenching their dominant positions. 'Smart speakers' are emerging as a new channel for distributing news content as searches for news content are an important function for these devices. Already the platforms are imposing restrictive requirements on how publishers can present content on these devices. We therefore recommend that these products should be considered as part of the Inquiry:

- **Amazon** has recently expanded into smart home devices with its Echo device and Alexa personal assistant service. These products enable voice searches including for news content. The Echo device launched in Australia in February 2018 and already holds a strong position in the United States, achieving 50 billion voice searches per month in September 2017. Amazon expects there will be 200 billion voice searches by 2020 and as at December 2017 there were over 25,000 'skills' (Alexa voice apps) available. The Alexa voice service is always in the cloud and can be built into any hardware with a microphone and a speaker, e.g. cars. The end-to-end integration of voice search and e-commerce via the Amazon shopping service makes Alexa a very compelling consumer offer.
- **Facebook** is developing a video chat device 'Aloha', which is due for release in May 2018. The device will allow video calls with other Aloha owners and will feature a large touchscreen, speakers and camera. The camera will be equipped with AI technology that frames shots and recognises objects in view. Users will need to have a Messenger or Facebook account to access Aloha. The device will also feature a voice assistant, which will run on M (the AI chatbot assistant Facebook developed for Messenger). There is potential for Aloha to use an audio version of M for e-commerce, which would allow Aloha owners to make purchases with their voice, similar to Amazon Echo.
- **Google** has developed a smart speaker device, Google Home, which enables users to use voice commands to interact with services through Google's personal assistant called Google Assistant. Google Home can search for news and information using Google search, stream videos to the user's TV with Google Chromecast, play music from Google Play, Spotify and YouTube, and control smart devices, such as smart light bulbs.
- **Apple** has also developed a smart speaker device, Apple Homepod, which functions in a similar way to Google Home and is powered by the voice assistant service, Apple Siri. The device integrates with a user's Apple Music account and provides home assistant services, such as searching for news and information and controlling smart devices.

While we consider that a number of digital platforms, including those mentioned above, are relevant to this Inquiry, News Corp Australia has chosen to focus on the platforms that directly affect our publishing business in this submission. More specifically, News Corp Australia deals with the impacts of Google, Facebook and Apple on the creation, distribution and consumption of news and journalism in Australia.

1.3 What 'news and journalistic content' is particularly relevant to this inquiry? Should the ACCC consider a broad range of specialist suppliers of news and journalistic content?

1.4 Should the Inquiry focus on news and journalistic content supplied to consumers in Australia or news and journalistic content produced in Australia?

We believe the impact of digital platforms on publishers is fundamental and widespread. The Inquiry should therefore consider a broad range of news and journalism, including local, original, professional and commercial journalism regardless of the format (print, print/digital or digital only).

Some may opine that certain 'categories' of news are more worthy than others, for example investigative journalism, specialist journalism or public interest journalism. We do not consider it appropriate to decide for each and every member of the Australian public what it is they should consider newsworthy or journalism. Rather, we consider that all categories of news and journalism are important, particularly as news and journalism is often distributed and consumed as a broad and diverse package. As publishers know, the arrangement of a compelling package of content is crucial to the sustainability of news and journalism in Australia. For example, the following stories were running on The Daily Telegraph website on the morning of 19 April 2018:

- A horror car crash that killed a teenager just that morning in one of Sydney's northern suburbs
- A suspected suicide of a young man who had helped fight off a lone-wolf terrorist attacker just two years ago
- A story, including passengers' accounts, of the engine explosion on a SouthWest airlines flight between New York and Washington DC where a woman, who later died, was almost sucked out of a broken window
- The delayed operation of Sydney's new light-rail network
- The death of ex sports broadcaster Daryl Eastlake
- A story about ISIS terrorist networks
- A story about 'the vegemite smear'
- A story about the alcohol rules on set of the bachelor in Paradise
- A rugby league story

Public interest journalism performs an important democratic function and the risk posed by digital platforms to its ongoing sustainability should be a particular focus of the Inquiry. As noted in the Senate Select Committee on the Future of Public Interest Journalism, public interest journalism has a number of roles and functions to play including to:

- keep the public up to date with what is going on in the world;
- provide the public with reliable information on which they may base choices as participants in political, economic and social life;

- provide a forum for the exchange of ideas and opinions;
- be a watchdog to those in power;
- help societies understand themselves; and
- provide the material upon which members of a society can base a common conversation.¹

We are of the view the Inquiry should consider news and journalism supplied to Australian consumers. Adopting a consumer-centric approach is consistent with competition and consumer law principles. We are also of the view that local Australian content is fundamental to the Inquiry as news about local affairs is most relevant to participation in Australian democratic society. Local content and news also provides a level of community service in addition to its news function. The detrimental impact of digital platforms on the production of local content will have a disproportionate impact on Australian consumers. Local content is unlikely to be produced by internationally-based publishers and more unlikely still to be produced by the digital platforms themselves. It is clear that if local content publishers are unable to survive as a result of the anti-competitive practices of digital platforms, local content may no longer be produced.

The digital environment has lowered barriers to entry and increased competition from new entrants including small online publishers and even bloggers. The Inquiry should take an inclusive approach to the distribution formats for news and journalism, encompassing written articles, audio, blogs, emails, push notifications, messenger content, digital magazines and user generated content. While News Corp Australia recognises that these forms of media play an important role, in the context of this Inquiry, small online publishers should not be considered substitutable with large-scale news organisations that invest in journalists and newsrooms around Australia and internationally, as well as in editorial control and legal compliance and adherence to publisher standards and ethics set by organisations like the Australian Press Council. News Corp Australia therefore submits that the Inquiry should particularly focus on the impact of digital platforms on the established publishers of news and journalism.

Further, we note that it is not only 'new online-only' providers of news and journalism that have found an audience online or are 'connecting with consumers' as set out in the Industry Overview to the Issues Paper. Rather, a range of news and journalism providers connect with consumers online. It does the media market a disservice to characterise traditional publishers as 'old' and more recent online providers as 'new' or more innovative. Notwithstanding the issues detailed in this submission, traditional publishers are some of the most successful online providers of news and journalism. We have embraced and adapted to the digital news environment and believe it has the potential to succeed, if permitted to compete on the merits. In any event, we believe that online-only publishers are experiencing similar challenges as a result of the dominance of digital platforms. In fact, digital-only news providers may be under even more pressure as many are totally dependent on how they are ranked by the dominant platforms for referral traffic.

It is true to say that we are Australia's largest creator of digital content and command the largest audience. However the model remains fragile and our industry has partially lost the ability to run its businesses the way it chooses.

¹ Senate Select Committee Report on the Future of Public Interest Journalism (2018) para 1.9

1.5 What are appropriate metrics for measuring the choice and quality of news and journalistic content?

We acknowledge that the concepts of quality and choice are subjective, however, we consider that the following indicia can be used as good measures:

- investment in news gathering, including in journalists (subject matter experts, specialist reporters and commentators), editorial oversight and legal compliance;
- responsibility for the material published;
- commitment to journalistic standards of ethics and accuracy;
- broad and diverse coverage of news, current affairs, opinion and analysis;
- sourcing primary information (interviews and materials); and
- original or unique content (as opposed to syndicated or plagiarised content).

Choice in the context of news and journalism encompasses both the number of different providers and the level of plurality. Plurality ensures that there is a diversity of viewpoints available and consumed across and within the media. It also safeguards against concentrating influence over public opinion and the political agenda. A vibrant media landscape enables readers to access different viewpoints which may challenge their opinions. Further, for choice to have any real meaning, there needs to be a level-playing field, allowing consumers to identify the source of a news item and make informed decisions about the news and journalism they wish to consume. In the context of online news, this means consumers should be able to access articles that are most relevant to their search queries and move easily between news sources and different platforms.

As described below, digital platforms are engaging in various practices that undermine quality news and journalism and consumer choice. In particular, digital platforms allocate traffic and prioritise content in ways that benefit their commercial interests and use techniques to trap consumers, knowingly or unknowingly, within the platforms' ecosystems. They erect technical barriers to switching, such as refusing to give publishers access to or the ability to share or port consumer data, keeping consumers within their walled garden and limiting the ability for publishers to innovate business models, including by developing direct subscription offers for content surfaced on the platforms.

Consumers are not always aware of how digital platforms manipulate search results and newsfeeds, often believing that the first article ranked in a search result or newsfeed is the most relevant or the most recent. The dominance of digital platforms in terms of referring consumers to news content exacerbates the problem. In the United Kingdom, the House of Commons Digital, Culture, Media and Sport Committee is conducting an inquiry into fake news. During an oral evidence hearing, Rebecca Pow MP commented on the editorial role performed by YouTube (which applies equally to other digital platforms):

It seems like, in choosing to rank videos and to have a system of what is good, what is better, what is higher and what is lower, you are in fact acting as an editor—that is what an editor of a newspaper would do—yet you are not calling yourselves editors; you are calling yourselves hosts. I wonder whether you think the description of what you are and the whole name of your platform ought to be changed so that

you take on more of the responsibilities of a bona fide newspaper and you have to apply broadcast and newspaper regulations to yourself. At the moment, you are unregulated.²

By prioritising content that supports their business models, digital platforms are perpetuating and inflating the value of selected news and journalism. They create trends that exist purely on their own platforms and use their algorithms to make certain content more available than other content, creating echo chambers and filter bubbles, where consumers only read content that confirms their own views and values.

The potential impact on quality and choice can already be seen in the reduction of journalist numbers, amongst other things. The reduction in revenues from advertising and subscriptions has led to an industry-wide focus on costs and newsroom transformation. The Media, Entertainment & Arts Alliance estimates that since 2011 more than 2,500 journalists have been made redundant at leading media outlets – about a quarter of the total number of journalists in Australia.

1.6 Are there any other issues relevant to the choice and quality of news and journalistic content that should be considered by the ACCC?

News Corp Australia has taken an inclusive approach to the questions raised by the ACCC and discusses a wide range of issues in addition to responding to the specific questions raised in the Issues Paper. We submit that all of the issues raised in this submission should be considered as relevant to the Inquiry.

² UK Parliament, Digital, Culture, Media and Sport Committee, Fake news inquiry, oral evidence hearing 8 February 2018, <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/fake-news/oral/78195.html>> question 306

Section 2: Market definition and key participants

- 3.1 What are the relevant media and advertising services markets for this Inquiry? Who are the key market participants?
- 3.2 What are the relevant markets for assessing the market power of digital platforms? Who do digital platforms compete with?

For the purposes of the Inquiry, we submit that the relevant markets are those that digital platforms participate in or otherwise affect. Digital platforms bring together an array of associated markets that affect the creation, distribution and consumption of news and journalism. These markets are separate but interconnected, where the consumer-facing service may appear to be offered for 'free', but in reality, it is tied to services that are remunerative, such as the collection and marketing of user data and the exposure to digital advertising.

While network effects, in themselves, are not dispositive of market power, most of the relevant markets exhibit network effects; that is, the services offered to consumers (e.g. search, social media, video content) become more attractive (to consumers and advertisers) the more consumers use the service. As set out below, a number of platforms hold substantial market power and the existence of network effects strengthens their dominant positions.

Relevant markets	Key participants
Market for the supply of internet search	Google, Bing, Ask.com, DuckDuckGo and Baidu
Market for the supply of social media	Facebook (including Instagram, Messenger and WhatsApp), Twitter, LinkedIn, Snapchat
Market for the supply of news and journalism	<p>Traditional and online: News Corp Australia, Fairfax, Australian Broadcasting Corporation, SBS, Seven West Media, Nine Entertainment, Ten Network</p> <p>Online only: Guardian Australia, The Daily Mail Australia, BBC Australia, BuzzFeed, Huffington Post, The Conversation and Crikey</p>
Market for the supply of news distribution (including aggregation)	Google, Facebook, Google News, Apple News, Flipboard, Reddit, SmartNews, Feedly, Inkl, Medium.com and News360
Market for the supply of video content	YouTube, Facebook, Dailymotion, Netflix and Vimeo
Market for the supply of advertising	Google, Facebook, other publishers of web content
Market for the supply of mobile device operating systems	Android, Apple iOS, Windows
Market for the supply of internet browsers	Chrome, Safari, Internet Explorer, Mozilla Firefox

Market for the supply of voice search, smart speakers and AI	Apple (Siri and Homepod), Google (Google Assistant and Google Home), Amazon (Alexa and Echo) and Facebook Aloha
Market for the supply of audio and podcasting	Spotify, Apple Music, Stitcher, Acast, Overcast, Tuneln, Downcast, and Whooshkaa

1 Market for the supply of internet search services

1.1 Market description

Internet search engines use sophisticated algorithms and web crawlers to search for keywords across the internet. Web crawlers build large indexes of web content, which are then analysed and updated so as to produce accurate responses to search queries. Search engines collect and organise responsive web pages to a search query on a search results page. The information searched for may consist of text (including news), maps, images, videos or other types of content.

General internet search should be considered a separate product market. This is consistent with the approach adopted by the European Commission in its investigation of Google Shopping, which concluded that internet search services constituted a separate market, regardless of whether there were further divisions between static device search and mobile device search.³ While the search service is apparently provided for 'free', in reality, it is supported by data collection and advertising. Although there appears to be no price attached to using internet search services, market substitutability can be assessed by looking at potential reductions in quality or increases in price in the form of more data collection and exposure to advertising. Vertical search services on content sites (e.g. Wikipedia, IMDB) and specialised services (e.g. Yelp, Skyscanner) are not substitutable for general search. These types of search engines do not use web crawlers but rather search within their own content or the content of third party partners.

In relation to news and journalism, internet search engines principally provide intermediary services. Users enter search queries for news items in a search engine, which then returns a search results page with links to and a snippet of relevant pages, including from publishers of news and journalism. If the consumer clicks on the link, the search engine directs that consumer to the website hosting the full article. Certain news articles may be ranked higher or otherwise prioritised on the search results page as a result of commercial arrangements between the publisher and the search engine or because the algorithm gives a higher ranking to certain types of news content. As described further below, search engines are now displaying additional content, including images, substantial snippets or full content articles, from within their own platforms so that the user is no longer referred to publishers' websites.

Search engines may be accessed by a user navigating to a search engine homepage or mobile application, or by using the search bar on an internet browser. Internet browsers may have a commercial arrangement with a search engine that gives that search engine default status, or the internet browser may be integrated with a particular search engine.

³ Case AT.39740 - Google Search (Shopping), Commission decision of 27 June 2017, para 156, <http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf>

The business model of search engines is to use data collected from search queries to inform online advertisers about the user's preferences and to facilitate targeted advertising.

1.2 Key participants

Google

Google is overwhelmingly the most used search engine globally and is estimated to provide 95 percent of general search services in Australia.⁴ On mobile devices, Google's market share for general searches is even higher, at approximately 98 percent.⁵ Nielsen estimates that 18.8 million Australians use Google search and Adobe analytics estimates that Google drives 45.9 million page impressions per day. Google is the default search engine and homepage on the internet browser Google Chrome. It is also the default search engine on the internet browser Apple Safari and the voice search application Apple Siri. Chrome is pre-installed on all Android devices and Safari and Siri are pre-installed on all iPhone/iPad devices.

When a user types a news related search query into Google, the user will be presented with a search results page, including:

- Un-sponsored organic results – which feature a title, a snippet of content featuring the search terms and a clickable link to the relevant web page;
- Un-sponsored organic results, featured in a 'box' – which present additional information or graphics;
- Un-sponsored organic results, featured in the 'News' tab – which presents only articles from news sources;
- Sponsored search results – which resemble un-sponsored organic results but will be prioritised in the results page with an indication that the listing is sponsored; and
- On mobile devices Google has introduced Accelerated Mobile Pages (AMP) – which feature basic and standardised web formats, aimed at faster load times, and are presented in a 'news carousel', allowing users to swipe through articles from different publishers.

These are illustrated in Figures 1 to 5 below.

Referrals from Google to a publisher's website have become an indispensable part of news dissemination. [redacted]⁶ According to a recent report by the Reuters Institute for the Study of Journalism, 23 percent of respondents use search engines as their preferred gateway to news content.⁷

⁴ IBIS World, IBIS World Industry Report OD5505 Search Engines in Australia, March 2018

⁵ Stat Counter, Mobile Search Engine Market share Australia Mar 2017 - Mar 2018 (2018), <<http://gs.statcounter.com/search-engine-market-share/mobile/australia>>

⁶ [redacted]

⁷ Reuters Institute Digital News Report 2017, Overview and Key Findings of the 2017 Report, <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>

Figure 1: Un-sponsored organic results (standard)

[Cricket Ball Tampering: 03/04/2018, Behind the News - ABC](#)

www.abc.net.au/btn/story/s4823284.htm

Apr 3, 2018 - It's the controversy that's had the whole country talking. Some of our biggest Australian Cricket players have now apologised after being caught breaking the rules during a test match in South Africa.

[Criticism of tampering trio 'out of line' | cricket.com.au](#)

<https://www.cricket.com.au/news/moises-henriques...tampering.../2018-04-11>

5 days ago - NSW and Australia allrounder Moises Henriques has thrown his support behind the three Australian players banned for ball tampering, saying some criticism of the trio has been "a little bit out of line". Henriques is one of the few current players to publicly express his view on ...

[CA slaps bans on tampering trio | cricket.com.au](#)

<https://www.cricket.com.au/news/player...steve...cricket...tampering/2018-03-28>

Mar 28, 2018 - Steve Smith and David Warner have been banned by Cricket Australia for a year for their involvement in the Cape Town ball tampering scandal, with the revelation that sandpaper was used in an attempt to rough up the ball. Cameron Bancroft, who had claimed he used sticky yellow tape, was banned for ...

[How the tampering scandal was exposed | cricket.com.au](#)

<https://www.cricket.com.au/news/supersport-host...ball-tampering.../2018-03-27>

Mar 27, 2018 - South African broadcaster reveals how Cameron Bancroft was caught on camera at Newlands.

Figure 2: Un-sponsored organic results (box feature)

The screenshot shows a Google search for "cricket tampering". The search bar is at the top with the Google logo on the left and a search button on the right. Below the search bar are navigation tabs for "All", "Videos", "News", "Images", "Shopping", "More", "Settings", and "Tools". The search results show "About 1,980,000 results (0.41 seconds)".

The "Top stories" section features three news items:

- Smith, Warner and Bancroft sent home, heavy sanctions to follow** - The Sydney Morning Herald, 4 hours ago.
- Cricket Australia ball tampering: Stars want to quit tour, report** - News.com.au, 1 hour ago.
- Cricket ball tampering scandal: WAGS should not be blamed for actions of partners** - Herald Sun, 25 mins ago.

Below the top stories is a link: "More for cricket tampering".

The "cricket tampering on Twitter" section shows three tweets:

- Michael Clarke (@MClarke23)**: "To many reputations on the line for the full story not to come out. Cape Town change room is a very small place!" - 5 hours ago - Twitter.
- Moises Henriques (@Mozzie21)**: "Ps. Not saying no one was aware of Cameron doing it, just highly doubt there was a 'senior players meeting' to decide to cheat. I think it was the captain attempting to protect a young player. They had 10 mins of panic between end of play & press conference." - 2 days ago - Twitter.
- Moises Henriques (@Mozzie21)**: "In my uneducated opinion, I dare say there was never a senior players meeting to discuss cheating - Smith made that up to take the heat of a young Cameron Bancroft not realising the outrage that would follow." - 2 days ago - Twitter.

At the bottom, there is a link to a news article: "Cricket Australia ball-tampering: Steve Smith, David Warner, Cameron ...".

Figure 3: Un-sponsored organic results (Google News)

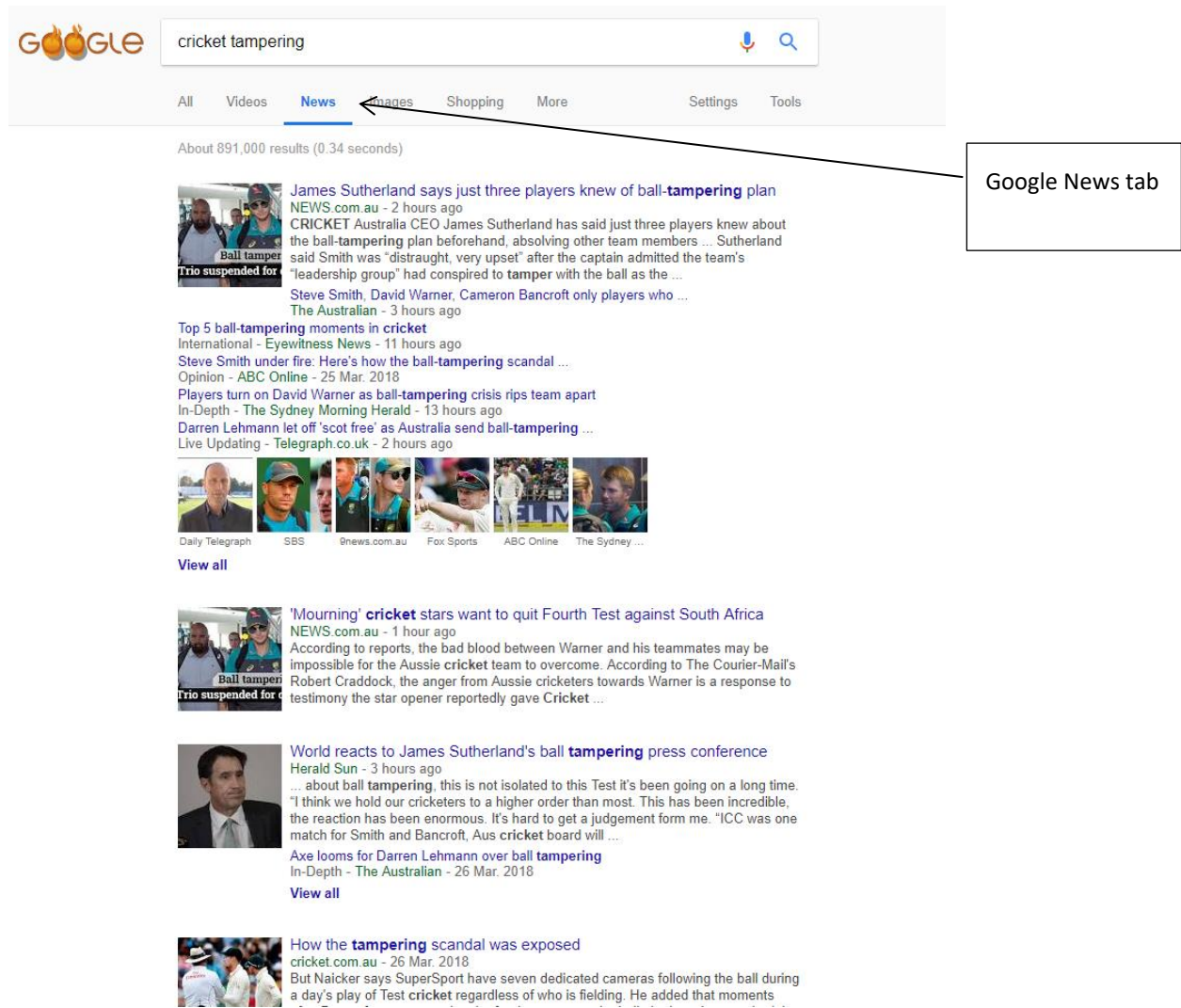


Figure 4: Sponsored search results

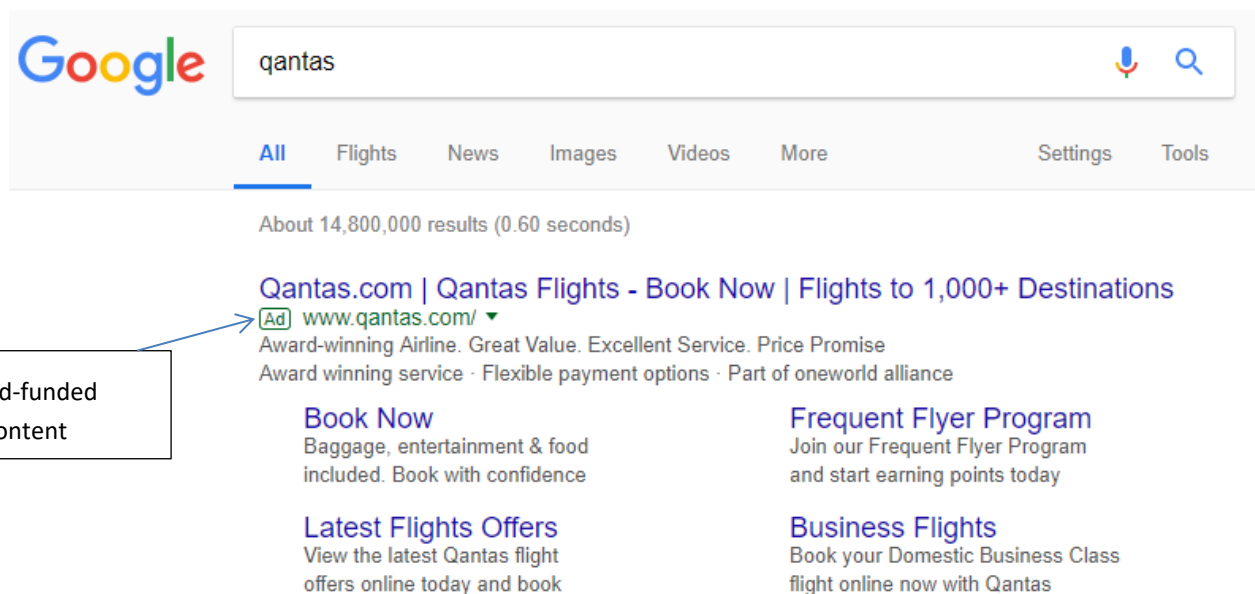
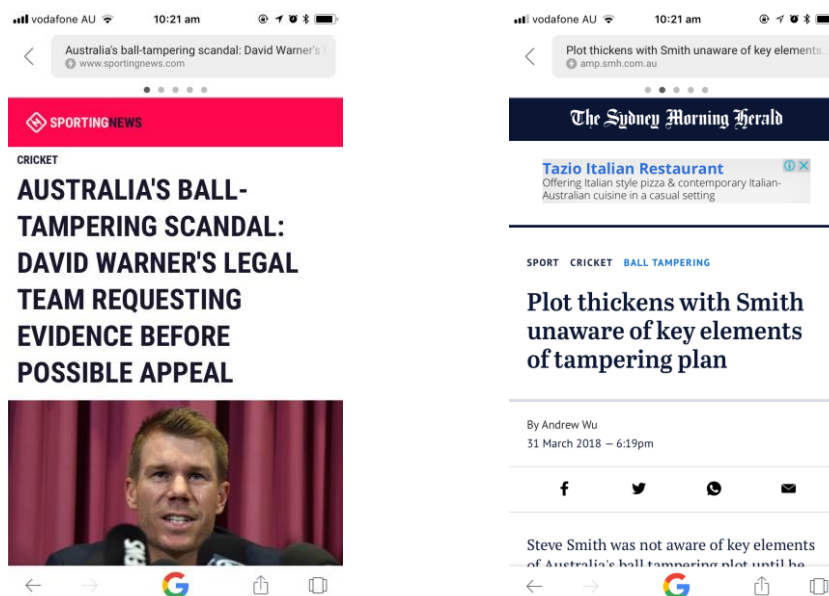


Figure 5: AMP articles on mobile devices



AMP news carousel

Swiping right takes the user to an AMP article from different publishers

Others

Microsoft's Bing/Yahoo search service is significantly smaller than Google, holding around a 3 percent market share in Australia. Bing serves as the default search engine for devices running on Microsoft's Windows operating systems. Bing has a licensing arrangement with Mi9 in Australia, which is owned by Nine Entertainment Co Holdings Limited, whereby Mi9 sells search advertising on Bing's platform.

Other search engines, including DuckDuckGo and Baidu, provide similar services and operate under similar business models. In aggregate, these suppliers represent around 2 percent of the market for the supply of internet search services.

2 Market for the supply of social media services

2.1 Market description

Social media services are multimedia communication services that allow users to create and share content, and to connect with other users, groups and businesses online or through a mobile application. Like internet search, the vast majority of social media platforms are provided to users for 'free' but are monetised through the collection of data, advertising or charges for premium services. Social media platforms typically feature a combination of contextual display advertisements and targeted sponsored links in a user's newsfeed. As within search, substitutability in this market can be assessed by reference to a reduction in quality or an increase in price, in terms of increased data collection, loss of privacy and increased exposure to advertising. Traditional one-way media channels including television and radio are not substitutable for social media services that allow for high degrees of user interaction and engagement.

In relation to news and journalism, social media services principally provide referral services. Consumers of news and journalism may also use tools on social media platforms to post, share, like and comment on news articles hosted on a news organisation's website. Additionally, publishers may also have a presence on the social media platform itself and display articles that may then be shared, liked or commented on within the social media ecosystem (e.g. <https://www.facebook.com/theaustralian/>). As described below, social media platforms increasingly embed full content articles, allowing users to read the article without leaving the platform.

2.2 Key Participants

Facebook

Facebook dominates the social media landscape with over 2 billion registered users, including around 1.4 billion active users and 600 million passive users.⁸ Active Facebook use means the user actively engages with the site, for instance by posting and searching for content, whereas passive Facebook use means the user visits Facebook and absorbs content but does not actively engage with the site. Around 17 million Australians use Facebook monthly and 97 percent of Australian social media users accessed Facebook in February 2018.⁹ Facebook reaches 84 percent of the Australian online population.¹⁰ Adobe Analytics estimates that Facebook drives 31.3 million page impressions per day.

Facebook offers its core social media service for 'free' to users on websites and mobile applications but collects data on users to market commercially, including to advertisers. Facebook distributes news and journalism in several ways:

- Users can post, share, comment on or like news articles on Facebook. When displayed on Facebook, the news article will typically include the title, a graphic and a short synopsis, with a link to the publisher's external site;
- Publishers may have their own Facebook page featuring articles and links to their external site. If Facebook users follow the publisher, articles from that publisher will appear in their newsfeeds; and
- Publishers can post 'Instant Articles' which are full content articles embedded within Facebook.¹¹

These are illustrated in Figures 6 to 8 below.

Referrals from Facebook to a publisher's website have become an indispensable part of news dissemination. [redacted].¹² According to a recent report by the Reuters Institute for the Study of

⁸ Facebook, Company Info Stats, Facebook Newsroom, 2018, <<https://newsroom.fb.com/company-info/>>

⁹ Nielsen DRM February 2018

¹⁰ Nielsen DRM February 2018

¹¹ News Corp Australia does not participate in Instant Articles.

¹² [redacted]

Journalism, 47 percent of respondents use Facebook on a weekly basis as a source of news.¹³ For individuals aged 18-24, news accessed via social media and online are their main sources of news.¹⁴

Figure 6: User post of news article on Facebook



¹³ Reuters Institute Digital News Report 2017, Overview and Key Findings of the 2017 Report, June 2017, <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>

¹⁴ Reuters Institute Digital News Report 2017, Overview and Key Findings of the 2017 Report, June 2017, <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>

Figure 7: Facebook page of *The Australian*

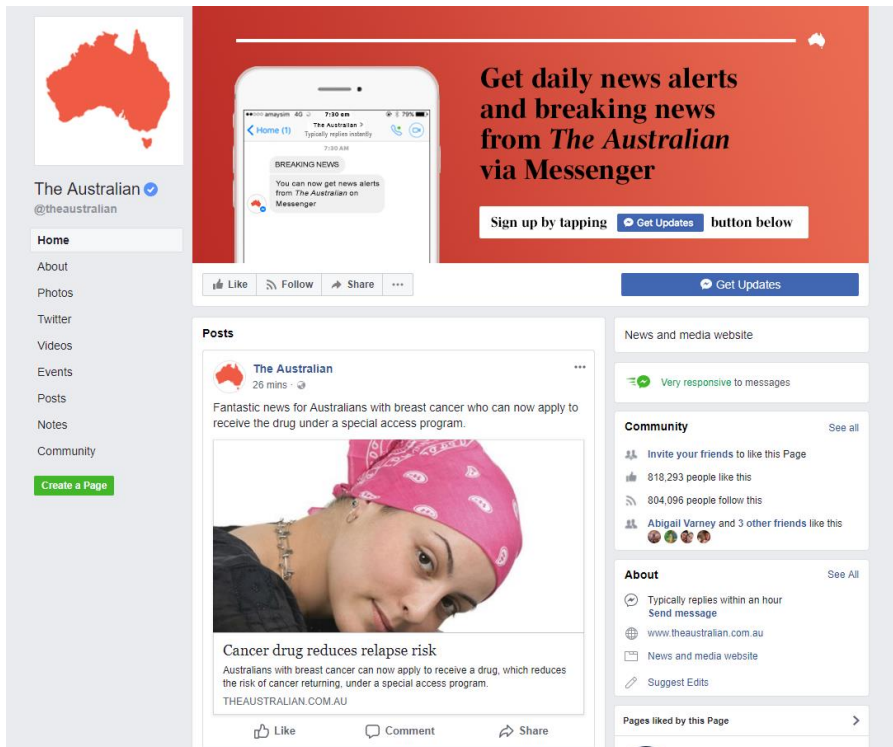
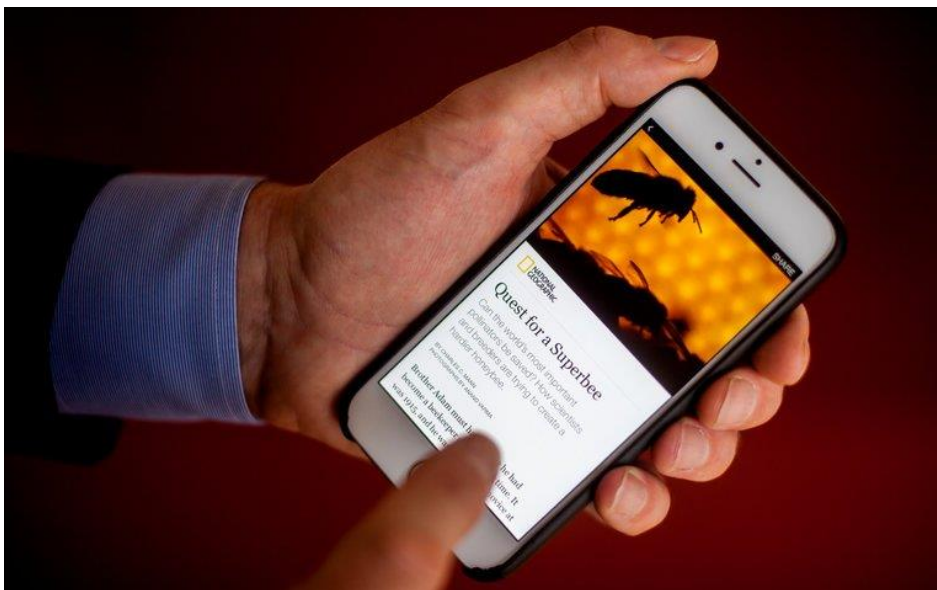


Figure 8: Facebook Instant articles

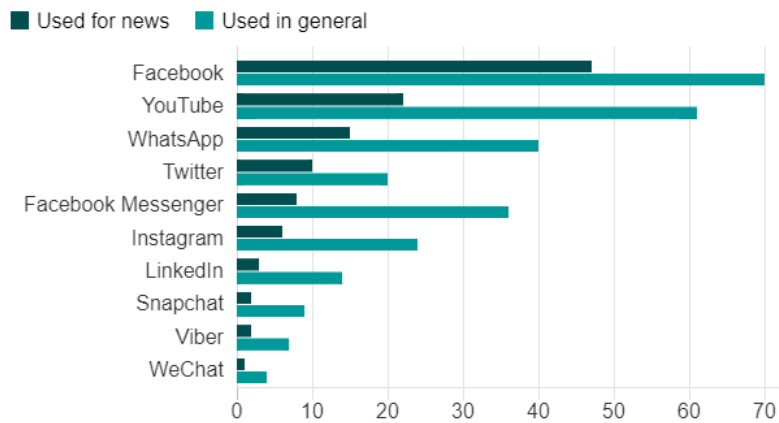


In addition to its social media platform, Facebook provides instant messaging services via WhatsApp and Facebook Messenger. Instant messaging services are an increasingly popular way to share news articles with friends and family. The Reuters Institute Digital News Report 2017 found that 15 percent of respondents to their survey find, share, or discuss news using WhatsApp and 8 percent use Messenger.

Figure 9: Use of social media as a source of news and generally

Facebook still leads, but WhatsApp is on the rise

Percentage of people using each service at least once a week



Source: Reuters Institute Digital News Report 2017



Source: Reuters Institute Digital News Report 2017 / BBC News infographic

Facebook also owns Instagram, which has around 800 million users worldwide and 9.9 million Australian users.¹⁵ Instagram is a photo and video sharing application powered by Facebook's data and algorithm. Users can post photos, 'follow', like and comment on other posts; users also see sponsored posts from advertisers in their Instagram feeds.

Others

Other relevant participants in this market include:

- LinkedIn (9.5 million Australian users¹⁶), which focuses on professional networking and allows users to post, share and like articles, promote posts and send sponsored direct messages;
- Twitter (6.4 million Australian users¹⁷), which allows users to 'tweet' short messages that may include links to full content articles hosted elsewhere and 'follow' other users; and
- Snapchat (5.1 million Australian users¹⁸) which focuses on younger users and provides multimedia messaging services that allow users to share posts via 'Snaps' or 'Stories' and also features a 'Discover' section with content, including video content.

¹⁵ Felix Richter, Instagram Now Has 800 Million Users, Statista, 5 December 2018, <<https://www.statista.com/chart/9157/instagram-monthly-active-users/>>; David Cowling, Social Media Statistics Australia – February 2018, Social Media News, 1 March 2018, <<https://www.socialmedianews.com.au/social-media-statistics-australia-february-2018/>>

¹⁶ Nielsen DRM February 2018

¹⁷ Nielsen DRM February 2018

¹⁸ Nielsen DRM February 2018

3 Market for the creation of news and journalism

3.1 Market description

News and journalism includes local, national and international news, sporting news, financial market information, weather information, a variety of feature stories and columns, various special interest sections and magazines. There are a number of modes of delivery for news and journalism: for example, print media (such as newspapers and magazines), radio, free-to-air television, subscription TV (via cable or satellite), online media and mobile devices. The digitalisation of content is leading to a convergence of the types of content that can be carried by different modes of delivery, as well as to the development of new types of content, such as interactive media and online 'rich media' combining text, audio and visual material. While the ACCC has not reached a concluded view on whether, from a consumer perspective, print newspapers and online news sites are in the same or separate markets, the ACCC has considered the constraint imposed on printed newspapers by online news sites.¹⁹

The typical business model for creators of news and journalism is to provide unique content to readers (for free or via a cover or subscription price) and in exchange sell readers' attention to advertisers. The ACCC has previously distinguished between 'aggregators of news content', including search engines like Google News and social media sites like Facebook, and sources that 'produce', 'supply' or 'generate' news.²⁰

The creation of news and journalism extends beyond an economic activity, performing an important democratic function, known as the fourth estate. This function includes disseminating information, undertaking investigation and analysis, presenting different perspectives, providing opportunities for public debate and advocating for change. Creating original, high quality and relevant news and journalism is a costly and demanding enterprise, requiring a team of journalists to source, research and write copy at pace, which is then edited and prepared for publication.

The hallmark of the professional newsroom is the responsibility it accepts for the information it publishes. Publishers take responsibility for the accuracy, relevance, fairness and completeness of the content published and commit to providing ongoing coverage of matters that impact the lives of its readers. The professional newsroom also accepts responsibility to uncover new information, verify it and then publish it. This is key differentiator between professional newsrooms and 'aggregator' news sources that distribute material uncovered by others and accept no responsibility for accuracy, relevance, fairness, or completeness.

Digitalisation and the increasing shift to online news consumption have transformed the media landscape. To varying degrees, all major news content producers offer online news services in addition to their traditional formats, including newspapers, televised news and radio news. In addition, online-only content creators have emerged and compete with established media organisations. Content creators typically publish their online content on a website and a specific mobile application. These sites feature a homepage with links to articles and also a vertical search function capability.

¹⁹ ACCC, Statement of Issues in relation to Seven West Media Limited - proposed acquisition of The Sunday Times publication and website from News Limited, 4 August 2016, paras 54-61

²⁰ ACCC, Statement of Issues in relation to Seven West Media Limited - proposed acquisition of The Sunday Times publication and website from News Limited, 4 August 2016, para 57

The acceptance of responsibility adds to the expense of operating an 'originator' newsroom in the layers of supervising journalists and editors, fact checking, legal oversight and resources to sustain complete and ongoing coverage. Digital publishing has increased the pressure on originator newsrooms because they now publish more content, more quickly and on more channels, therefore requiring additional accuracy, ethical and legal oversight.

In the online environment, the two primary business models for publishers are either or a combination of:

- **Ad-funded** – where advertising constitutes the sole or predominant source of revenue and users can access content for 'free', although they are subject to data collection and advertising. Under this model, advertisements will feature alongside news content and publishers will collect data on the user while they are visiting the publishers' website (e.g. where they originated from and which articles they access), which they then market to advertisers; and
- **Subscription-funded** – where publishers generally 'lock' content behind a paywall. There is variation between how paywalls can operate. A subscription site may operate a hard paywall which is only accessible to subscribers; others may allow metered access (e.g. allowing X free views per month); and others may use a dynamic paywall where visitors may be shown a free article or a paywall and tailored subscription offer.

3.2 Key Participants

In Australia, the major creators of multi-format news and journalism are News Corp Australia, Fairfax, Australian Broadcasting Corporation, SBS, Seven West Media, Nine Entertainment and Ten Network. In addition, there are a number of online-only creators of news and journalism in Australia, including *Guardian Australia*, *The Daily Mail Australia*, *BBC Australia*, *BuzzFeed*, *Huffington Post*, *The Conversation* and *Crikey*.

4 Market for the supply of news distribution including aggregation services

4.1 Market description

News Corp Australia believes that the dominance of digital platforms and the increasing intermediation between publishers and readers means that there may now be a separate market for the distribution of news, distinct from the creation of news.

While content creators also participate in the distribution market as suppliers of their own content, the role of third party platforms is of increasing importance and power. Given the increased intermediation between content creators and consumers by platforms, the distribution of news may now in fact constitute a separate market from the creation of news content.

The distribution of news content includes distribution of news by search engines and social media providers. We discuss this function of search engines and social media providers above when discussing their general search and social media services. In addition, distribution includes the aggregation of news content by digital platforms, for instance, by the use 'scraping' or 'crawling' techniques to automatically collate news from different media content creators. Other news aggregators may play a more active role in selecting their content by either selecting particular publishers or allowing publishers to sign up to the

platform following a screening test. News aggregators may also apply a degree of human curation to the selection of content.

Online news aggregation services may be delivered in a variety of digital formats, including via websites, mobile applications, emails or online newsletters. These services are supported by different monetisation models, including online advertising (supported by user data), subscriptions, and/or revenue-sharing arrangements with content creators.

4.2 Key participants

Google

In addition to its general search function, Google also serves as a news aggregation platform. That is, many consumers use the general search function to find out about a particular news item and then review a list of relevant results and navigate their way to a publisher's website.

As noted above, Google also provides a specific news aggregation service via 'Google News', which compiles headlines from more than 50,000 sources around the world.²¹ Google News uses an algorithm to aggregate news sources and tailor them to the user, by using data collected from search queries and other Google services. Google News features a vertical navigation panel which allows consumers to view news near the user's location, as well as to view headlines for specific regions, including Australia.²²

Google News is more than just an index of content; it aggregates, ranks and finalises the presentation of that content. In doing so, Google itself offers editorial content similar to that offered by publishers, with the standard sections arranged by topic.²³

Apple News

Apple also hosts a news aggregation platform on its mobile devices in Australia, the US and the United Kingdom. Apple News is a default app on Apple's iOS operating system, which aggregates stories and presents them in a mobile-optimised format. When users open the Apple News app, the home screen contains stories that appear in a tab marked 'For You', which is updated with stories based on a user's reading history and by what the user chooses to follow. Unlike Google News, Apple News stories are compiled partly through an algorithm and partly through human curation. Apple News team has a number of editors who select the Top Stories to promote to consumers. A 'Spotlight' tab aggregates stories chosen by the Apple News editors. Users are also able to actively follow specific topics, stories and publishers. The app is designed so that users do not need to move between news apps but can instead remain on the one platform.²⁴

Apple News is integrated across the iOS operating system and users do not need to be in the app to engage with its content. For instance, Siri is able to learn a user's interests and news preferences. If a user swipes left on their Home Screen, Apple News presents a short summary of Top Stories and

²¹ See Google News Help, Get Started with Google News, 2018 <<https://support.google.com/news/answer/106259?hl=en>> for more information about Google News Corp Australia

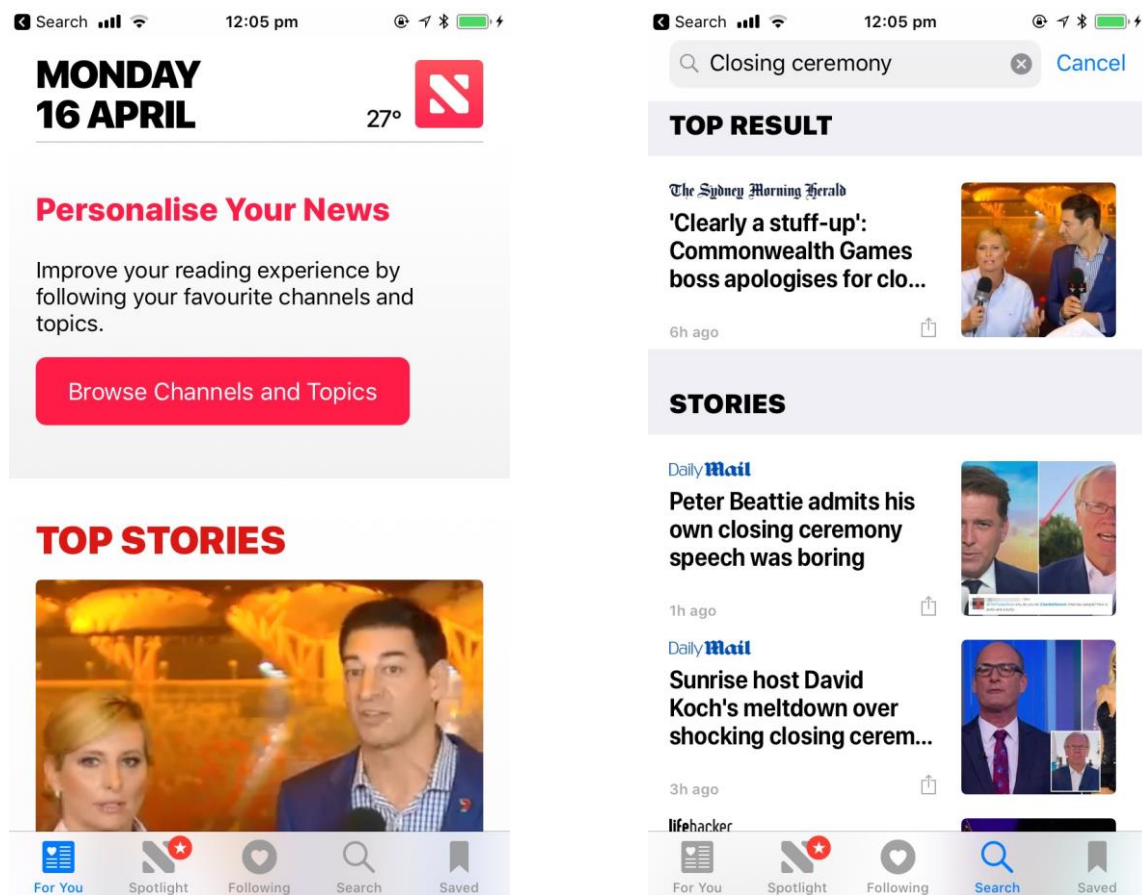
²² See Google News <<https://news.google.com.au/>>

²³ Autorité de la concurrence, Opinion No 10-A-29 of 14 December 2010 on the competitive operation of online advertising <http://www.autoritedelaconcurrence.fr/doc/10a29_en.pdf>

²⁴ Apple News, <<https://www.apple.com/au/news/>>

Trending stories alongside calendar updates, Siri app suggestions and weather. Users can also receive alerts from Apple News which sends a notification in relation to breaking news or stories of general interest. Users are able to control notification preferences.

Figure 10: Apple News



Others

Other news aggregation services include Flipboard, Reddit, Medium.com, SmartNews, Feedly, Inkl and News360.

According to Nielsen DRM Audience Data in February 2018:

- Apple News received 4,292,065 Unique Audiences;
- Reddit (app and website) received 3,633,206 Unique Audiences; and
- Flipboard (app and website) received 2,341,144 Unique Audiences;
- Medium.com received 568,769 Unique Audiences.

5 Market for the supply of video content services

5.1 Market description

Video content platforms allow users to share, upload, watch and comment on video content. Users can access videos by scrolling through recommended content or entering search queries into the platform's search function. While social media sites also offer services for sharing videos, video content platforms primarily focus on users watching and uploading amateur and professional video content, whereas

social media platforms primarily focus on users sharing multimedia content with immediate 'connections'.

The typical business model of video content platforms is to provide content services to users and then collect user data, which can be marketed to advertisers. Targeted advertisements, informed by user data, may then be displayed on the platform or embedded into the videos themselves. Users may be required to watch a portion of advertising before they can watch the video content (pre-roll advertising) or watch content and have ads shown mid-way through the content (mid-roll).

In relation to news and journalism, video content platforms host publishers' content which may also include links to the publishers' external website. If a user enters a search query for a particular news item, the user will see a variety of results relevant to their search. Clicking on a video will lead to further video recommendations, published by the same or similar channels, or videos dealing with similar content.

Video content platforms are expanding into offering 'live' video functions, which enable publishers to upload live content, such as for breaking news. Users can also comment on live video feeds in real time.

5.2 Key participants

YouTube

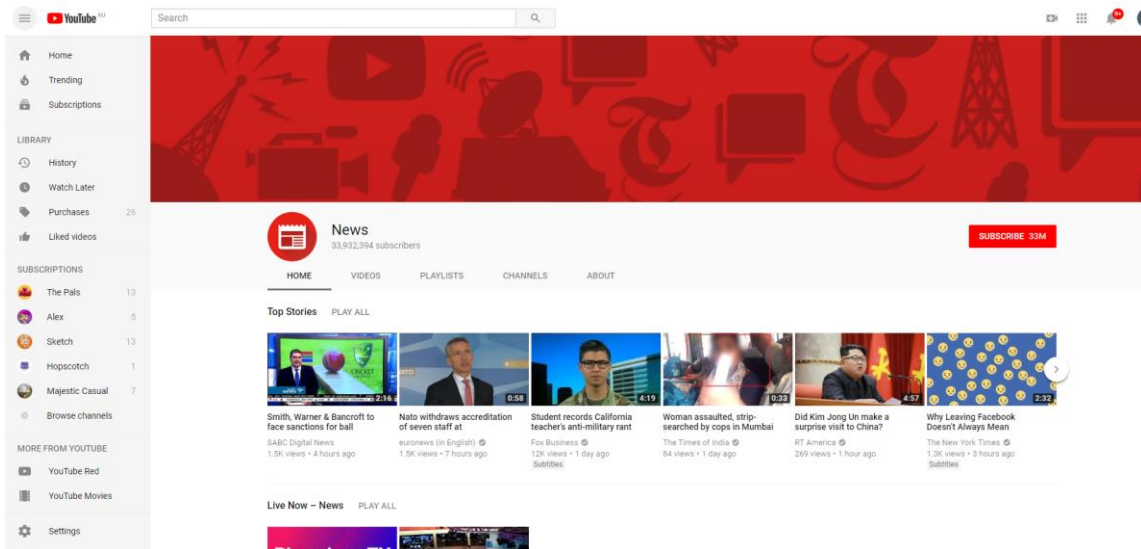
YouTube (owned by Google's parent company Alphabet Inc) is the dominant provider of video content services and, according to some sources, the second most popular website on the internet behind Google search.²⁵ In Australia, 15.4 million users visit YouTube each month, and spend 18 hours and 15 minutes per person, with 78 percent of watch time occurring on smartphones or tablets.²⁶

YouTube offers a dedicated 'News' channel, which aggregates news content from content creators. This channel can be further broken down into sections, and users can subscribe to specific news content, for example Sports News, World News and National News.

²⁵ As at 10 April 2018, Alexa, youtube.com Traffic Statistics, 2018 <<https://www.alexa.com/siteinfo/youtube.com>>

²⁶ Nielsen IAB Monthly Video Report February 2018

Figure 11: News page on YouTube



YouTube is integrated with Google's search platform so that if a user conducts a search on Google's platform, they can click the vertical 'Videos' tab, which will show relevant videos hosted on YouTube. Further, the information that Google collects on users in general searches is used to inform YouTube search results. For example, if a user reads a number of articles about a particular news event on Google, and that same user accesses YouTube News, they will most likely be recommended video content which deals with the same topic.

Facebook

Facebook provides video content services, including live streaming, in addition to its core social media services. Videos are given higher newsfeed priority, and are searchable in Facebook. The newsfeed algorithm prioritises video with high repeat viewership and videos that are part of a series. In 2016, Facebook launched Facebook Live to enhance user engagement and increase time spent on the platform. As part of its Facebook Live strategy, Facebook is actively pursuing video rights for major events, including sports events. In 2017, Facebook launched a 'Watch' tab to the newsfeed on mobile, desktop and Facebook's TV apps. Facebook pays publishers to provide content or allows publishers and third party contributors to upload video content on invitation.

Others

Other participants include Dailymotion, Netflix and Vimeo.²⁷

6 Market for the supply of advertising services

6.1 Market description

Advertisers may use a variety of media to advertise their goods and services, including print publications (newspapers, magazines, catalogue inserts), print catalogues and flyers that are letterbox dropped (ie,

²⁷ The Netherlands Authority for Consumers & Markets, A closer look at Online video platforms, <<https://www.acm.nl/sites/default/files/documents/2017-10/acm-a-closer-look-at-online-video-platforms-2017-10-16.pdf>>

not distributed with a publication), direct mail and other direct marketing, including electronic direct mail, an array of online platforms including websites, social media platforms and streaming, television (free to air and subscription), radio, out-of-home / outdoor and cinema advertising.

The supply of advertising has significantly changed in recent years, principally as a result of the decline of print media and the growth in digital/online media, data-driven advertising and intermediation. The proportion of non-digital advertising has been decreasing for some time in favour of digital advertising. While spend on internet and digital advertising is undoubtedly increasing, television, cinema, out-of-home and radio advertising continue to have a place in advertising campaigns. Given the focus of the Inquiry, News Corp Australia focuses on digital advertising in this submission.

The supply of digital advertising involves placing advertisements within web properties to promote a product or service. Digital advertisements encompass a range of products, including:

- **Search advertising and marketing** – which refers to the monetisation of search engines through advertising, usually through charging advertisers to increase the visibility of their website in search engine results.²⁸ The mechanism that chooses which ad to place takes into account the price that each advertiser bids for each given word. Search advertising is now the largest category of digital advertising, accounting for close to half (45 percent) of all Australian digital advertising revenue.²⁹ In 2017, search advertising expenditure grew 4.7 percent to almost AUD\$3.6 billion.³⁰ The popularity of search advertising is due to its precision in identifying potential customers, the measurability of results, and the high return on investment.³¹
- **Search engine optimisation** – which involves optimising content so as to improve a site's positioning in organic search results.
- **Display or banner ads** – which can appear on any web page and can be contextual (selected according to the content of the page on which they appear) or non-contextual. Display ads can take a variety of forms, including static (graphical banners) or rich media formats (video or dynamic graphics). Display advertising revenue in Australia has been steadily growing: at the end of 2017, annual display advertising expenditure exceeded AUD\$2.8 billion, representing growth of 6 percent and a 36 percent share of all digital advertising expenditure.³²
- **Classifieds ads** – which are grouped within specific web pages under headings classifying the product or service being offered (e.g. houses for sale in particular suburbs).

²⁸ IBIS World, IBIS World Industry Report OD5535 Digital Advertising Agencies in Australia, February 2018

²⁹ iab. Australia, Online Advertising Expenditure Report: 12 Months Ended 31 December 2017, 5 September 2017 <<https://www.iabaustralia.com.au/research-and-resources/advertising-expenditure/item/11-advertising-expenditure/2454-online-advertising-expenditure-report-quarter-ended-dec-2017>>

³⁰ iab. Australia, Online Advertising Expenditure Report: 12 Months Ended 31 December 2017, 5 September 2017 <<https://www.iabaustralia.com.au/research-and-resources/advertising-expenditure/item/11-advertising-expenditure/2454-online-advertising-expenditure-report-quarter-ended-dec-2017>>

³¹ Memorandum to the United States of America Federal Trade Commission <<https://graphics.wsj.com/google-ftc-report/img/ftc-ocr-watermark.pdf>> 10

³² iab. Australia, Online Advertising Expenditure Report: 12 Months Ended 31 December 2017, 5 September 2017 <<https://www.iabaustralia.com.au/research-and-resources/advertising-expenditure/item/11-advertising-expenditure/2454-online-advertising-expenditure-report-quarter-ended-dec-2017>>

- **Social media advertising** – includes display ads placed in social media and influencer sites, such as blogs, videos, Facebook or Instagram. Influencers are people whose comments internet users read and rate highly, and whom advertisers use to deliver their ad messages.

There are two main pricing mechanisms for online ads:

- **'Cost per click' (CPC)** – which is mainly used for search ads and contextualised display ads; advertisers pay the publisher when the user clicks on the ad. This pricing mechanism reflects the fact that for search and contextual ads, the advertiser generally aims at a direct response from the user (and pays according to that response); and
- **'Cost per thousand impressions' (CPM)** – which is mainly used for display ads, where advertisers pay the publisher when a specific number of ads is displayed to users (each individual ad is one 'ad impression').

In addition, there are two ways of trading digital advertising opportunities:

- **Non-programmatic advertising** – which involves a direct transaction between the publisher/ad network and the advertiser/ad network. The advertiser makes a budget available and/or determines their maximum price for advertising space, defines their advertising goals and their target audience. The publisher then allocates the available advertising space to the advertiser and ensures that the right advertisement is shown in each sold advertising space; and
- **Programmatic advertising** – which automates the process of buying and selling of digital advertising, using algorithms and software to match advertisers' ad content with publishers' ad inventory.³³ In its simplest form, programmatic advertising simply automates the traditional one-to-one relationship between the publisher and the advertiser. Programmatic advertising is increasingly operating on the basis of real time bidding (RTB), where pricing is determined via a real time auction mechanism.

Programmatic advertising and Ad-Tech

Programmatic advertising relies on advertising technology (Ad Tech) to support the delivery, targeting and analysis of digital ads. While News Corp Australia believes that Ad-Tech services could be considered as a separate market, it is not necessary to take a final view on this question for the purposes of this submission. There are six key elements to the Ad Tech pipeline:

1 Publisher ad servers

When a user arrives on a website, the publisher ad server decides the best way to fill a particular ad space, including by sending it to a Supply Side Platform. Publisher ad servers also track the number of ads delivered, their performance, and offer other analytical tools.

2 Supply Side Platforms (SSPs) and ad networks

SSPs facilitate the automated sale of ads. Some publishers use SSP technology to directly manage their ad sales, while others hire an ad network to perform that function on their behalf. SSPs and ad networks often then sell publisher inventory on ad exchanges.

³³ Google Blog Inside AdSense, Find out if you should go programmatic, 14 December 2016
<<https://adsense.googleblog.com/2016/12/SuccessStack-find-out-if-you-should-go-programmatic.html>>

3 **Ad exchanges**

Ad exchanges are a digital marketplace for ads, which runs real time auctions for ad space on websites. When ad space is sent to an exchange, the exchange takes bids from various buyer ad networks and DSPs that want to use the advertising space. The ad exchange determines the winning bid.

4 **Demand Side Platforms (DSPs) and ad networks**

DSPs facilitate the automated buying of ads. Some advertisers use DSPs directly to manage their own ad purchases, while others hire an ad network or agency to perform that function on their behalf. DSPs and ad networks often then bid on ad space available on ad exchanges.

5 **Data Management Platforms (DMPs)**

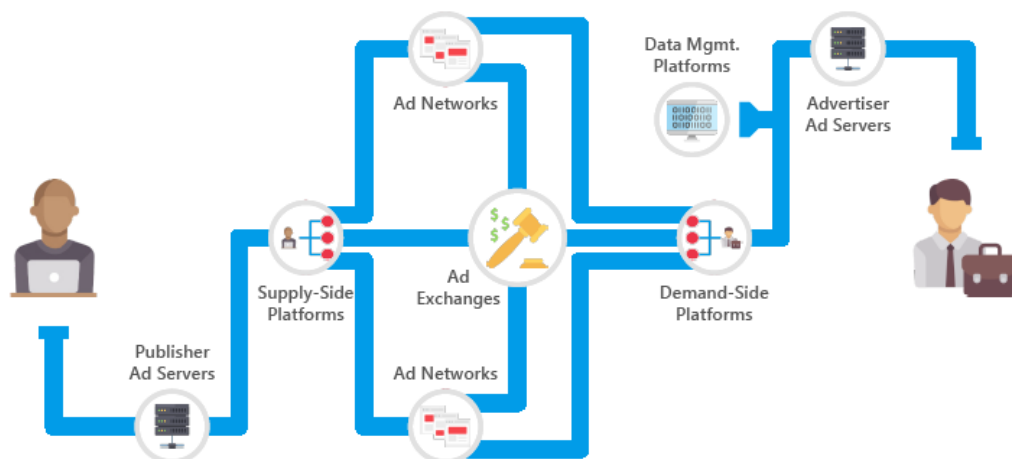
These services collect, house and analyse data, which advertisers can use to target ads to particular audiences. This targeting can occur because DMPs send their analytics to DSPs, which use the information to inform their ad inventory purchasing.

6 **Advertiser Ad Servers**

Ad Servers store and manage advertising campaigns. When an ad impression is sold, these servers actually deliver the ad to the ad space that appears on the user's screen.

Figure 12 below illustrates how these elements fit together.

Figure 12: The Ad-Tech Pipeline



The process of buying, selling and placing programmatic advertisements takes place within less than half a second and involves the following steps:

- As soon as a user visits a publisher's site, the publisher's ad server determines whether a direct ad is available and, if not, sends a request to an ad exchange specifying any relevant information about the impression/visitor and the publisher's reserve price for the inventory;
- The ad exchange then transmits this information to participating DSPs which evaluate the information and prepare optimal bids based on the instructions received from their advertiser/agency customers;

- Once the bidding information is received the ad exchange runs a second price auction and determines the winning bidder from among the DSP responses; and
- The ad exchange then communicates with the publisher's ad server telling it which ad to display and the advertiser's ad server places the relevant ad on the webpage for display to the user.

Programmatic advertising is now a crucial part of the digital advertising landscape. Globally, 59 percent of digital display advertising was traded programmatically in 2017, and this is expected to increase to 67 percent by 2019. Although Australia currently lags behind the global average (one quarter of display ads were traded programmatically in 2017), this figure is expected to rise to more than 55 percent by 2019, indicating extremely rapid growth in this area, well above the global growth rate.³⁴ The increasing popularity of programmatic advertising reflects the benefits it offers both advertisers and publishers:

- **Greater liquidity** – publishers can sell advertising inventory to a wide network of advertisers and advertisers can access the inventory across many websites;
- **Analytics** – advertisers can measure return on investment with greater accuracy, allowing for the measurement and comparison of different ad campaigns;
- **Targeting capabilities** – advertisers can precisely target ads based on user data; and
- **Efficiency** – the automated processes reduces transaction costs associated with buying and selling ads for both publishers and advertisers.

Mobile advertising

It is also important to note the growing importance of the mobile segment of digital advertising. Mobile phone penetration has for a long time exceeded computer ownership, and consumers now spend more time using the internet on their mobile than on a desktop, laptop or other connected device.³⁵

Advertisers are aware of the increasing importance of reaching consumers through this medium, with growth in digital advertising revenue driven by mobile advertising.³⁶

As a segment of digital advertising, mobile advertising can also be broken down into the above-mentioned digital advertising categories: search and display.³⁷ For example, mobile display advertising would include pop-up or banner advertisements that appear in a mobile app, and images or video that appear alongside content on mobile websites. Similarly, mobile search advertising would include sponsored search engine results that appear in mobile search results.

In Australia, the majority of mobile ad spend (54 percent) goes to mobile display. For the first time ever in 2017, mobile display ad spend exceeded more than half the share of total display ad spend. The remaining 46 percent of mobile ad spend went to mobile search. Like other forms of digital advertising,

³⁴ Rochelle Burbury, Two-thirds of digital display ads will be sold programmatically by 2019: Zenith, Bandt, 21 November 2017 <<http://www.bandt.com.au/marketing/two-thirds-digital-display-ads-will-sold-programmatically-2019-zenith>>

³⁵ Mary Meeker, Internet Trends 2017, Code Conference, 31 May 2017, <<http://www.kpcb.com/internet-trends>>, page 9

³⁶ iab. Australia, Online Advertising Expenditure Report: 12 Months Ended 31 December 2017, 5 September 2017 <<https://www.iabaustralia.com.au/research-and-resources/advertising-expenditure/item/11-advertising-expenditure/2454-online-advertising-expenditure-report-quarter-ended-dec-2017>>

³⁷ Autorité de la concurrence, Opinion No 10-A-29 of 14 December 2010 on the competitive operation of online advertising, para 75 <http://www.autoritedelaconcurrence.fr/doc/10a29_en.pdf>

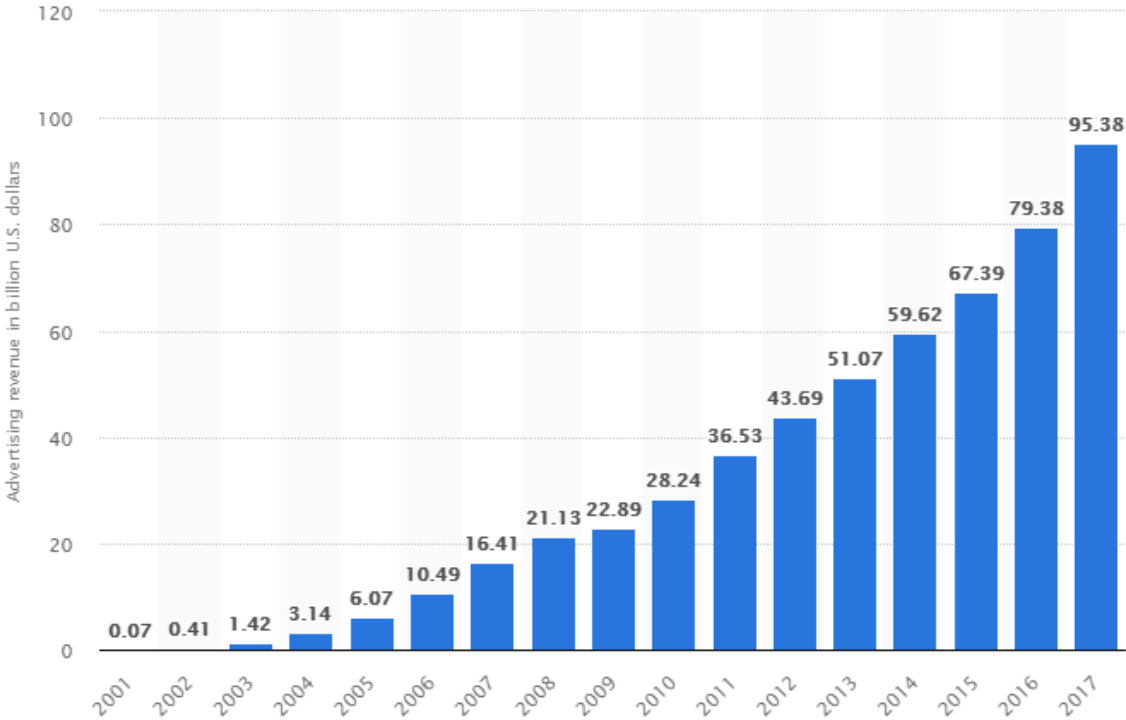
mobile advertising is increasingly sold programmatically and the descriptions of Ad Tech products are equally applicable.³⁸

6.2 Key participants

Google

Google is the largest supplier of digital advertising services in the world. In 2017, Google's digital advertising revenues were US\$95.38 billion and about 90 percent of Google's total revenues come from advertising.³⁹

Image 13: Google's advertising revenues 2001-2017 (in US\$ billions)



Source: Statista

Google's advertising operations encompass the following services:

- **AdWords Search**

Google's AdWords Search accounts for more than three quarters of all search advertising globally and this share is expected to rise to 80 percent by 2019.⁴⁰

³⁸ iab. Australia, Online Advertising Expenditure Report: 12 Months Ended 31 December 2017, 5 September 2017 <<https://www.iabastralia.com.au/research-and-resources/advertising-expenditure/item/11-advertising-expenditure/2454-online-advertising-expenditure-report-quarter-ended-dec-2017>>

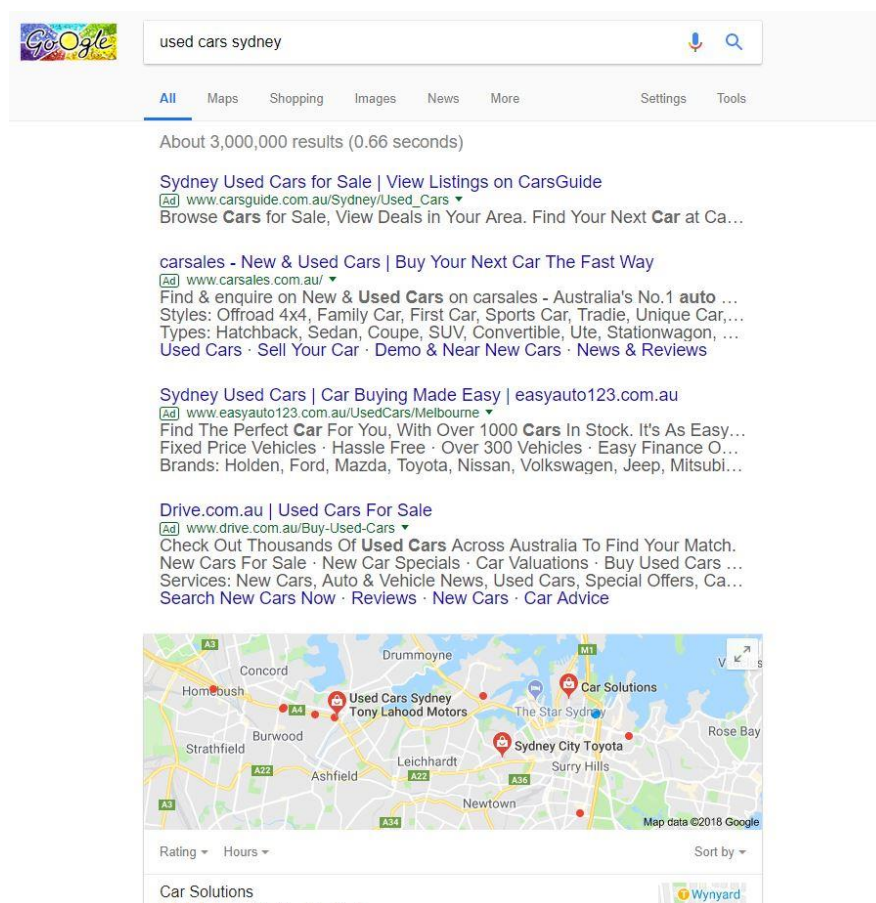
³⁹ Eric Rosenberg, The Business of Google, Investopedia, 13 November 2017 <<https://www.investopedia.com/articles/investing/020515/business-google.asp>>

⁴⁰ Tess Townsend, Google's share of the search ad market is expected to grow, recode, 14 March 2017 <<https://www.recode.net/2017/3/14/14890122/google-search-ad-market-share-growth>>

AdWords works by advertisers selecting a set of keywords which, when searched, will trigger their text ad to show. The text ads can appear above or below search results on Google, Google Play, Google Shopping and Google Maps. This can be seen in Figure 14 below, with the four links appearing above the map all marked as 'ad'. AdWords ads can also appear in the results of search partners, including hundreds of non-Google websites with integrated search functions, Google Video and other Google sites.⁴¹

AdWords ads are most commonly charged on a CPC basis, with the actual price determined through a bidding process. Advertisers select a maximum cost-per-click bid, which is the highest amount they are willing to pay for a click on their ad.⁴² When a user searches a query on Google, Google looks at their AdWords pool; if advertisers have bid on keywords that Google determines are relevant to the query being searched, an auction will be triggered. The auction winners are determined algorithmically, based on a combination of maximum bid and 'quality score' (a metric based on the relevance and usefulness of the ad). The actual price each winner pays is determined on the basis of both their rank in the results and their quality score.⁴³

Figure 14: Google AdWords sponsored search results



⁴¹ Google, AdWords Help, Where your ads can appear, 2018 <<https://support.google.com/adwords/answer/1704373?hl=en>>

⁴² Google, AdWords Help, Cost-per-click (CPC): Definition, 2018 <<https://support.google.com/adwords/answer/116495>>

⁴³ WordStream, What Is Google AdWords? How the AdWords Auction Works <<https://www.wordstream.com/articles/what-is-google-adwords>>

- **AdWords Display Network**

Google's AdSense is the largest display advertising network in the world, with more than 2 million publishers, and with ads displayed on more than 12 million webpages.⁴⁴

Advertisers can choose to display AdWords ads through the Google Display Network. Advertisers who use the Google Display Network can have their advertisements shown on webpages, as well as YouTube videos, Gmail emails, mobile websites and mobile apps.⁴⁵ Google's Display Network can reach 90 percent of webpages on the internet.⁴⁶

The Google Display Network works in a similar manner to AdWords Search. However, instead of matching advertisers' keywords to search queries, the keywords are matched to a webpage or app content. The price advertisers pay is determined in a similar bidding process.⁴⁷ The integration of AdWords Search and AdWords Display Network strongly incentivises advertisers to use Google for both types of digital advertising. Once an advertiser sets up AdWords Search, including choosing their keywords and understanding the bidding process, it is very simple to extend an AdWords Search campaign into AdWords display advertising.

- **AdSense**

AdSense is an ad network for publishers which places text, image, video or interactive advertisements relevant to their content on their websites, which can be targeted on the basis of Google's user data. Google inserts HTML code into the publisher's website and then conducts an AdWords Display auction, whereby Google searches for advertisers from its network, automatically accepting the highest bid on behalf of the publisher, and then places the winning advertisement in the space.⁴⁸ AdSense can be easily linked with Google's DoubleClick for Publishers. Publishers receive a per-click revenue payment from users clicking these ads, which is a percentage of the revenue Google receives directly. The current revenue share for publishers is 68 percent.⁴⁹

- **DoubleClick Ad Exchange (AdX)**

Google acquired independent SSP AdMeld in 2011, and has now absorbed its Supply Side Platform functions into Google's ad exchange, AdX. Ad exchanges were designed to auction off unsold ad space through programmatic RTB.⁵⁰ The AdX auction draws ads from a variety of ad

⁴⁴ MonetizePros, The Ultimate Guide to AdSense & Ad Networks, 4 June 2015 <<https://monetizepros.com/ad-sales/guide-to-adsense-ad-networks/>>; Websites Using Google AdSense, Built With, 2018 <<https://trends.builtwith.com/websitelist/Google-AdSense>>

⁴⁵ Google, AdWords Help, About the Google Display Network, 2018 <<https://support.google.com/adwords/answer/2404190?hl=en-AU>>

⁴⁶ Mike Rhodes, Parts 1 & 2 The Display Grid: How to Scale Your AdWords Display Campaigns Profitably with Laser-Focused Targeting and the Right Choice of Ad Type, Digital Marketer, 11 May 2017 <<https://www.digitalmarketer.com/scale-google-display-campaigns/>>

⁴⁷ WordStream, What Is Google AdWords? How the AdWords Auction Works <<https://www.wordstream.com/articles/what-is-google-adwords>>

⁴⁸ WordStream, What Is Google AdWords? How the AdWords Auction Works <<https://www.wordstream.com/articles/what-is-google-adwords>>

⁴⁹ Google, AdSense Help, AdSense revenue share, 2018 <<https://support.google.com/adsense/answer/180195?hl=en>>

⁵⁰ Nitin Narang, What is the Difference Between Ad Exchange and Ad Network, Media and Entertainment Industry Trends, Technology and Research, 12 February 2014 <<http://www.mediaentertainmentinfo.com/2014/02/5-concept-series-what-is-the-difference-between-ad-exchange-and-ad-network.html/>>

networks, of including AdSense.⁵¹ AdX is estimated to capture 52 percent of the programmatic ad exchange market.⁵²

AdSense operates inside AdX and both technologies provide publishers with the same end result – the placement of ads alongside their content. However, AdX draws from networks beyond just AdSense, meaning a greater number of potential buyers. AdX also allows publishers a more granular level of control over the bidding process, but is more complex to manage, and only available to select large publishers. Like AdSense, AdX is designed to integrate with DFP for ad management.⁵³

Google's pricing model for AdX is charged on a revenue share basis. Information relating to News Corp Australia's achieved pricing is confidential however varies from [redacted].

- **AdMob**

AdMob is an ad network for mobile advertising, allowing publishers to monetise content through banner, full page and video advertisements within mobile apps. Google retains approximately 40 percent of the ad revenue from AdMob.⁵⁴

- **DoubleClick for Publishers ('DFP')**

DFP is estimated to capture approximately 69 percent of the ad server market.⁵⁵

DFP is an ad-serving platform that provides streamlined ad management for publishers in one central place, and optional programmatic advertising through AdSense and Google's ad exchange, AdX. DFP is generally provided to publishers on a CPM basis. Google's pricing model for DFP is charged on a fixed number of impressions delivered (a publisher's total advertising inventory), whether it is sold or not. The underlying cost to any publisher is between \$0.01 – \$0.50 CPM (depending on the ad type and shape being delivered, e.g. video ads cost more than standard display ads). [redacted]

- **DoubleClick Bid Manager**

Bid Manager is a programmatic buying platform giving advertisers access to inventory across ad exchanges to bid, target and optimise digital marketing campaigns. DoubleClick Bid Manager is the only tool that is able to purchase YouTube inventory programmatically and a buyer using a competitive DSP (eg. AppNexus) would be unable to purchase YouTube inventory. DoubleClick Bid Manager allows its advertisers to optimise media buying based on advertising viewability.

⁵¹ Chandal Nolasco da Silva, AdX vs AdSense: Which is Better and Will Make You More Money? Search Engine Journal, 15 December 2017 <<https://www.searchenginejournal.com/adx-vs-adsense/227581/>>

⁵² Datanyze, 2018

⁵³ DoubleClick by Google, Difference Between Ad Exchange and AdSense, 2018 <https://support.google.com/dfp_premium/answer/4599464?hl=en>; Chandal Nolasco da Silva, AdX vs AdSense: Which is Better and Will Make You More Money? Search Engine Journal, 15 December 2017 <<https://www.searchenginejournal.com/adx-vs-adsense/227581/>>

⁵⁴ MonetizePros, AdMob Review – Review of AdMob for Publishers, 9 September 2016 <<https://monetizepros.com/ad-network-reviews/admob/>>

⁵⁵ Datanyze, 2015

- **Google Audience Center 360**

Audience Center 360 is a tool to collect and organise data sources, enabling advertisers to find, expand, and reach their most valuable audiences at the optimal time.

- **Google Analytics**

Google Analytics is a tool for measuring site traffic and user behaviour. Google Analytics embeds a HTML code within a website's source code, allowing site traffic to be recorded and reported. This information enables website owners to optimise their own digital advertising.

Google Analytics is used by more than two thirds of the top 10,000 websites, more than three quarters of the top million websites, and is roughly ten times more widely used than its closest rival.⁵⁶

- **DoubleClick Campaign Manager**

Campaign Manager is an ad server that allows advertisers to plan, execute and measure display campaigns executed through DoubleClick. It was as previously named DoubleClick for Advertisers.

- **DoubleClick Search**

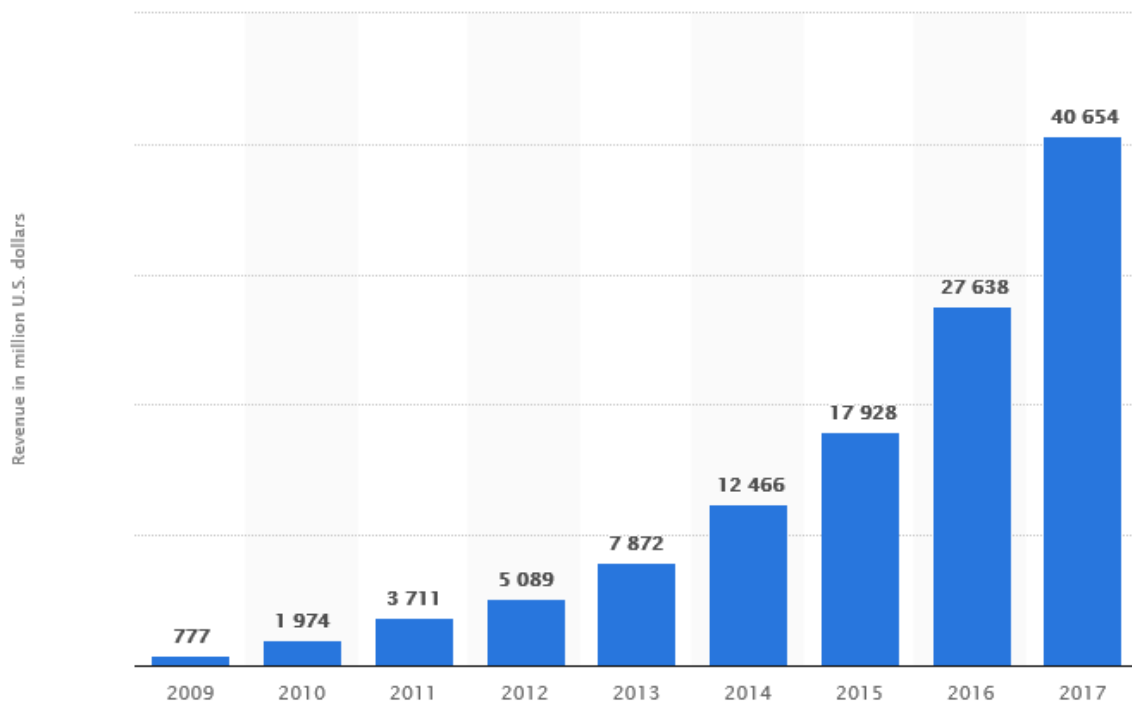
Double Click Search is a platform for advertisers to manage search marketing campaigns across multiple engines and media channels.

Facebook

Facebook is the second largest supplier of digital advertising opportunities, generating US\$39.94 billion in 2017. Advertising revenue accounted for 98 percent of Facebook's 2017 global revenue.

⁵⁶ Built With, Google Analytics Usage Statistics, 2018 <<https://trends.builtwith.com/analytics/Google-Analytics>>; Matt McGee, As Google Analytics Turns 10, We Ask: How Many Websites Use It? Marketing Land, 12 November 2015 <<https://marketingland.com/as-google-analytics-turns-10-we-ask-how-many-websites-use-it-151892>>

Figure 15: Facebook's global revenues from 2009 to 2017 (in US\$ millions)



Source: Statista

Facebook's advertising operations encompass the following services:

- **Ads Manager**

Ads Manager is a tool to purchase and manage advertisements that appear on Facebook, Instagram, Messenger and Audience Network.

- **Facebook Business Manager**

Facebook Business Manager is a tool that, among other things, allows advertisers to track the performance of ads across different accounts and related reporting tools.

- **Audience Network**

Facebook Audience network is a demand-side platform that allows advertising campaigns to extend beyond Facebook, to third party mobile apps and mobile websites. Advertisers are able to use Facebook's unrivalled trove of personal data and the same highly personalised targeting and measurement tools available for regular Facebook ads. Publishers can then utilise ads from Audience Network to monetise content in their apps or mobile websites. Like AdSense, publishers and Facebook share revenue from ads on Audience Network. The revenue split is not publicly disclosed, but it is estimated that publishers receive about 70 percent.

According to Facebook, more than 1 billion people globally see an ad through Audience Network each month.⁵⁷ While Google still dominates in the display advertising market, these figures disguise Facebook's growing market share in the mobile space. Audience Network only covers

⁵⁷ Marty Swant, The Facebook Audience Network Now Serves Ads to 1 Billion People Each Month, AdWeek, 12 January 2017 <<http://www.adweek.com/digital/facebook-audience-network-now-serves-ads-1-billion-people-each-month-175516/>>

mobile display advertising and Facebook is Google's biggest competitor, with 40 percent of the top 500 apps integrated with Audience Network.⁵⁸

Others

Other relevant participants are Microsoft, Yelp, Yahoo, Amazon and AOL. The net share of revenue for search advertising for these companies is between 1 and 8 percent each.⁵⁹

7 Market for the supply of mobile operating systems

7.1 Market description

The market for the supply of mobile operating systems is relevant to the Inquiry as suppliers use mobile operating systems to give preference to particular digital services, such as by pre-installing internet search engines, internet browsers or news aggregation services. These services are then used by consumers to access news and journalism. Static device operating systems are not substitutable for mobile operating systems, which have been designed taking into consideration issues relevant to mobile devices, including responsive design and consistent network access.

Smart mobile devices are mobile devices such as mobile phones, tablets or watches that are equipped with a mobile operating system. Mobile operating systems are system software products that control the basic functions of a smart mobile device and enable the user to make use of the device and run application software on it.⁶⁰ Applications written for a given mobile operating system will typically run on any mobile device using the same mobile operating system, regardless of the manufacturer.

7.2 Key participants

Google Android

Google's operating system, Android, is licensed free of charge to any device manufacturer.

Manufacturers take the latest version of the Android source code and build their smart mobile phone devices around the operating system. Android has a market share of around 52 percent of handsets in Australia.⁶¹ Android devices come with Google services, such as Google Chrome, Google search and YouTube pre-installed. Google Play Store is one of several platforms through which users can download mobile apps for Android devices, including news and journalism apps. Android also allows apps to be installed from outside the Google Play store, including through app stores developed by device manufacturers.

⁵⁸ Facebook, Reach more people with Facebook Audience Network <<https://www.facebook.com/audiencenetwork/products/advertisers>>

⁵⁹ Tess Townsend, Google's share of the search ad market is expected to grow, recode, 14 March 2017 <<https://www.recode.net/2017/3/14/14890122/google-search-ad-market-share-growth>>

⁶⁰ See Case COMP/C-3/37.792 – Microsoft, Commission decision of 24 March 2004, para 37 (adapted for mobile OSs)

⁶¹ ACCC, Authorisation Final Determination in Bendigo and Adelaide Bank & Ors - Authorisation, Applicants' submission in support of the applications for authorisation received 26 July 2016, page 18, citing Kantar WorldPanel data for the three months to January 2016

Apple iOS

Apple's operating system iOS is supplied as an integrated product with Apple iPhones. Apple iOS has a market share of around 41 percent of handsets in Australia.⁶² Apple pre-installs the Safari internet browser, the Siri voice search application, and the Apple News aggregation service on all iOS devices. The App Store is a digital distribution platform for mobile apps using Apple iOS. App developers can offer their apps on iOS devices and the App Store allows users to download these apps onto their Apple devices. Apple's App Store is generally the only way to distribute and install apps on Apple devices, including news and journalism apps.

Microsoft Windows

Windows Phone, developed by Microsoft, is available primarily on its Microsoft Lumia handsets and licensed free of charge to other device manufacturers. Microsoft Windows has a market share of around 5.4 percent of handsets in Australia.⁶³ Microsoft's Windows Phone Store sells Windows Phone apps. The Windows default internet browser is Internet Explorer, which is powered by Microsoft's Bing search engine.

8 Market for the supply of internet browsers

8.1 Market description

Web browsers are software products used by individual users on desktops or other devices to access and interact with content on the internet. That content is hosted on servers which are connected to networks. Technically, a web browser is a software tool that makes use of a Transfer Control Protocol/Internet Protocol (TCP/IP) connection to send and receive Hypertext Transfer Protocol (HTTP) data traffic in accordance with the user's wishes. The web browser then processes the answer from the relevant web server and renders the received web content to make it visible to the user.⁶⁴

Most web content makes use of the web's 'hypertextuality' to enable online navigation. This relates to the ability to link from one web page to other web pages (or graphics and media files) elsewhere on the web via hyperlinks. In web browsers, links are usually rendered as 'clickable' so that the web browser user can navigate the web just by pointing to and clicking on the links with the computer mouse and without having to manually enter the address of a web page. Web browsers therefore allow users to access content quickly and easily across a wide range of web pages.

In addition to enabling navigation in the web, web browsers typically offer the following set of additional features:

- proxy configuration which specifies how the web browser accesses web content;
- management of plug-ins to handle additional content types, such as Flash or Java programs;

⁶² ACCC, Authorisation Final Determination in Bendigo and Adelaide Bank & Ors - Authorisation, Applicants' submission in support of the applications for authorisation received 26 July 2016, page 18, citing Kantar WorldPanel data for the three months to January 2016

⁶³ ACCC, Authorisation Final Determination in Bendigo and Adelaide Bank & Ors - Authorisation, Applicants' submission in support of the applications for authorisation received 26 July 2016, page 18, citing Kantar WorldPanel data for the three months to January 2016

⁶⁴ Case COMP/C-3/39.530 – Microsoft, Commission decision of 16 December 2009
<http://ec.europa.eu/competition/antitrust/cases/dec_docs/39530/39530_2671_3.pdf>

- bookmarking to keep track of useful web page addresses;
- Hypertext Markup Language (HTML) pre-processing to filter out unwanted or dangerous content;
- cookie management which allows the user to keep control of small text files deposited by many web pages into users' web browsers in order to enable recognition of previous visitors;
- pop-up blocker to manage web page window behaviour;
- tabbed browsing interface to keep several web pages open at once;
- website certificate checker to ascertain web page credentials and to protect against phishing;
- offline cache to keep a copy of accessed online content for later offline usage; and
- history which keeps a record of visited locations on the web.

8.2 Key participants

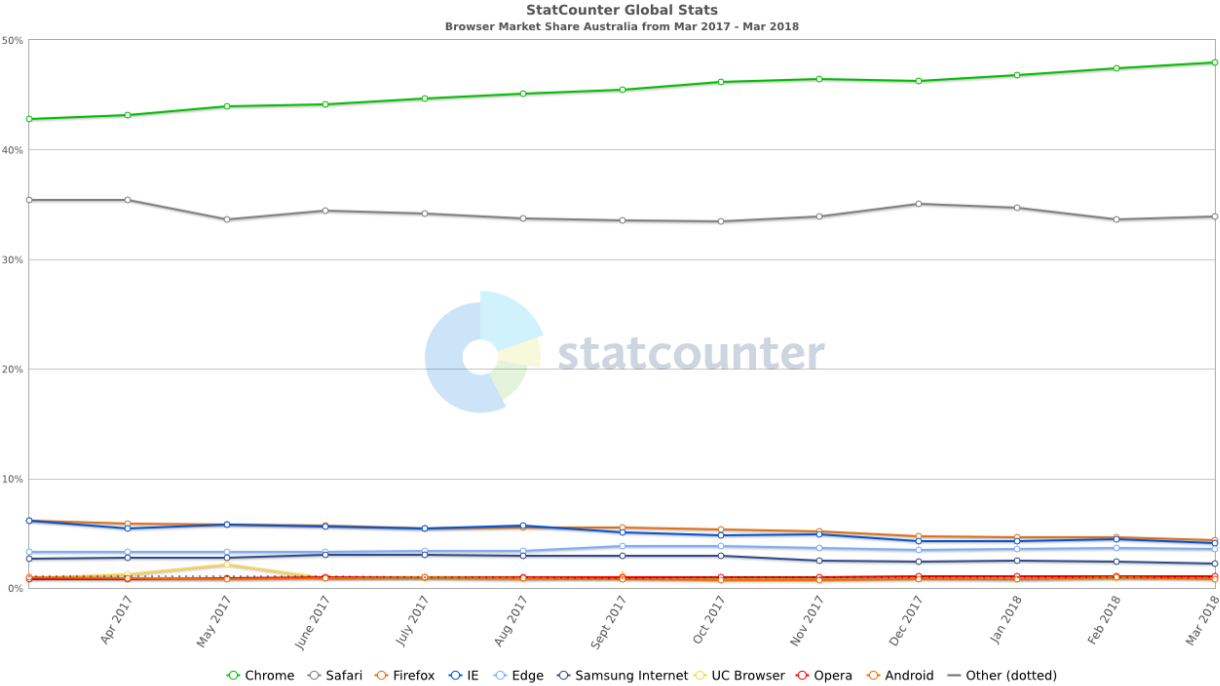
Google Chrome is the leading web browser across all devices in Australia with over 48 percent market share.⁶⁵ Google Chrome uses Google search as the default search engine and features Google search as the default homepage. The second most popular web browser, Apple Safari, has over 30 percent market share. The search bar on Apple Safari is powered by the Google search function.

Other relevant participants are Microsoft Internet Explorer and Mozilla Firefox, which have market shares of between 2 to 5 percent each.⁶⁶

⁶⁵ GlobalStats, StatCounter, Browser Market Share Australia Mar 2017 - Mar 2018, 2018 <<http://gs.statcounter.com/browser-market-share/all/australia>>

⁶⁶ GlobalStats, Statcounter, Browser Market Share Australia Mar 2017 to Mar 2018, 2018 <<http://gs.statcounter.com/browser-market-share/all/australia>>

Figure 16: Internet browsers by market share across all devices – desktop, mobile and tablet



Source: StatCounter

9 Market for the supply of voice search, AI and smart speakers

9.1 Market description

The major digital platforms are entering into emerging markets for the supply of voice search and smart speakers. Voice search services allow users to search by speaking into a mobile or static device. The voice search function usually features a virtual assistant powered by artificial intelligence. Smart speakers are wireless speakers and voice command devices with an integrated virtual assistant that can offer interactive actions. Some smart speakers can also act as a smart device that utilises Wi-Fi, Bluetooth and other wireless protocol standards to extend usage beyond audio playback, such as to control smart home devices. Smart speakers, powered by voice search and AI, are not substitutable for general internet search services, as they are specifically designed to operate within a user's home and to integrate with smart home appliances. This market is growing significantly, particularly on mobile devices. While there were initial concerns around the voice detection capabilities of voice search products, advancements in technology across all facets of digital devices, including smart TVs and smart speakers, have made voice search more reliable and in turn more mainstream.

9.2 Key participants

Participants in this industry include all the major platforms, including Apple (Siri and Homepod), Google (Google Assistant and Google Home), Amazon (Alexa and Echo) and Facebook Aloha. Siri operates using Google search technology, as does Google Assistant. News Corp Australia refers to the description of these services in response to question 1.2 above.

10 Market for the supply of audio and podcasting

10.1 Market description

The market for the supply of digital audio services includes both downloading services and streaming services. Downloading involves the purchase and storage of a digital copy of an audio file on a computer or mobile device. With a streaming service, the user does not download an audio file and no permanent copy is stored on the user's computer or mobile device. Instead, the audio file is delivered in small data packets over the internet and playback commences as soon as the internet streaming is initiated.

Podcasts are digital audio files that may be downloaded temporarily to a computer or mobile device. They are typically available as a series or programme, new instalments of which can be received by subscribers automatically. Podcasts are distributed via audio platforms, such as Apple iTunes, Google Play, SoundCloud, Whooshkaa and Spotify.

Suppliers of audio and podcasting services use a variety of monetisation methods, including ad-funded, per item purchases and subscriptions, or a combination of these. Those that operate subscription services generally offer some level of access for free. Many podcasts offer free subscriptions to consumers but feature advertisements during the podcast episode. Various news organisations and publishers, including traditional newspapers, are engaging with the podcast format, including *The Australian*, *Guardian Australia* and *The Age*. Public service broadcasters, such as the ABC and BBC, offer free podcasts with no advertisements, including digitalised back catalogues of radio programs.

The audio and podcasting market in Australia is growing rapidly. In a recent Australian study 17 percent of respondents said they had listened to a podcast in the last month and 72 percent of those interviewed were familiar with the term podcasting. This awareness level in Australia was higher than the US which had a rate of 60 percent in 2017.⁶⁷ Mobile devices are by far the most common device where podcasts are consumed with 69 percent of podcast listeners and 82 percent of podcast subscribers consuming via mobile devices.⁶⁸ There is significant growth in the podcasting advertising market as a result of higher audience engagement levels which in turn correlates with higher advertising yields. An IAB study released in February 2018, revealed that 13.6 million Australians are streaming audio content on their digital device in December 2017 and two-thirds of Australian media agencies are regularly buying streaming audio. The number of media agencies using podcast advertising regularly has nearly tripled in the last year (from 5 percent in December 2016 to 14 percent in December 2017).⁶⁹

⁶⁷ See Edison Research, *The Podcast Consumer Australia 2017*, 19 July 2017 <<http://www.edisonresearch.com/podcast-consumer-australia-2017/>> - 1007 users 12 and over surveyed in Q1 2017, slide 9 and 5. See also, iab. Australia, *Digital Audio: State of the Nation - Feb. 2018*, 21 February 2018 <<https://www.iabastralia.com.au/research-and-resources/research-resources/item/12-research-and-resource/2442-digital-audio-state-of-the-nation-feb-2018>>

⁶⁸ See Edison Research, *The Podcast Consumer Australia 2017*, 19 July 2017 <<http://www.edisonresearch.com/podcast-consumer-australia-2017/>> - 1007 users 12 and over surveyed in Q1 2017, slide 23

⁶⁹ iab. Australia, *Digital Audio: State of the Nation - Feb. 2018*, 21 February 2018 <<https://www.iabastralia.com.au/research-and-resources/research-resources/item/12-research-and-resource/2442-digital-audio-state-of-the-nation-feb-2018>>

10.2 Key participants

Apple Podcasts

Apple Podcasts which is distributed via Apple iTunes dominates the podcasting market in Australia and the world. Apple iOS pre-installs the Apple Podcast app as an integrated product with Apple's iPhones. Apple controls the distribution and searchability of audio content and has market share of over 55 percent globally.⁷⁰

Spotify

Spotify is a key participant in this market. Although Spotify uses a freemium model, as at January 2018, Spotify had 70 million paying subscribers globally.⁷¹ Spotify hosts both audio and podcasting content.

Stitcher

Stitcher is a podcasting app which provides users access to over 100,000 podcasts. Users are able to create playlists of their favourite podcasts. Stitcher is integrated with Amazon's Echo device, which can play episodes upon user request. Stitcher includes a premium version of the app which has a number of bonus features.

Others

Other podcast and radio services include Acast, Overcast, Downcast, TuneIn and Whooshkaa.

⁷⁰ PowerPress Podcast, Podcast Statistics 2017, <<https://powerpresspodcast.com/2017/06/14/podcast-statistics-ns-2017/>>

⁷¹ Statista, Number of paying Spotify subscribers worldwide from July 2010 to January 2018, 2018 <<https://www.statista.com/statistics/244995/number-of-paying-spotify-subscribers/>>

Section 3: Market power

3.3 How should the market power of digital platforms be assessed? What are appropriate metrics for measuring any market power (e.g. market concentration, profits, prices, number of users, access to user data)?

3.4 Do digital platforms have market power? If so, which digital platforms and in which markets? In particular:

- (a) What realistic alternatives are available to users (i.e. consumers, advertisers and media content creators) of digital platforms? Do these alternatives effectively constrain the behaviour of digital platforms?**
- (b) Do users use multiple digital platforms for similar functions? Do you have any evidence or observations on switching between platforms or the growth of new platforms?**
- (c) What difficulties do users encounter in switching between platforms? Do digital platforms engage in behaviour that makes switching between platforms more costly or more difficult for users?**
- (d) Does increasing the number of users increase the attractiveness of that digital platform for other users? Does this mean that it is only viable for one or two digital platforms providing a similar service to consumers to operate at the one time?**
- (e) What difficulties are faced by providers in establishing competing platforms? Does the threat of new entry limit the market power of digital platforms? Over what timeframe should the threat of new entry be assessed?**
- (f) Are there examples where digital platforms have engaged in behaviours that indicate the exercise of market power? What types of users are most at risk from any exercise of market power by digital platforms?**

We submit that regard should be had to the usual indicia of market power, that is market shares, barriers to entry and expansion and countervailing buyer power. However, some of the usual tools for determining market power may not be as useful in this context. In particular, in determining market shares, factors such as sales, volumes and capacity are less relevant and we would suggest using other factors, such as user traffic (the number of page views and unique visitors to a platform) and data points (the ability for platforms to generate additional data points on consumers).

Further, the markets in which digital platforms operate are highly integrated and interconnected, where the consumer-facing service is often tied to remunerative services in other markets, such as data collection and advertising. Digital platforms are able to use revenue from the remunerative services (e.g. advertising) to improve the 'free' service and increase their market share in the 'free' market. Accordingly, digital platforms' ability to raise advertising prices or decrease quality is relevant to determining market power on both the 'free' and remunerative sides of the platforms.

We recommend that the Inquiry should also take into account the ability of users to multi-home (use multiple digital platforms to perform the same service),⁷² however, we note that this has been diluted by the existence of brand effects (trust in the digital platform's brand).⁷³ It may also be important to take a longer-term time frame in considering the impacts of various practices.

News Corp Australia submits that a number of digital platforms possess significant market power in each of the markets in which they specialise. However, as discussed above at 1.3 above, in this submission we will focus on the platforms that directly affect our publishing business – Google, Facebook and Apple. We submit that these platforms hold significant market power in the relevant markets and are engaging in various anti-competitive practices that are entrenching their role as intermediaries in relation to the distribution of news and journalism.

As outlined below, digital platforms are engaging in various anti-competitive practices that are entrenching their role as intermediaries in relation to the distribution of news and journalism.

Platform	Relevant markets
Google	<ul style="list-style-type: none"> the supply of internet search services the supply of video content services the supply of mobile device operating systems the supply of internet browsers the supply of digital advertising services (including Ad-Tech)
Facebook	<ul style="list-style-type: none"> the supply of social media services the supply of digital advertising services (including Ad-Tech)
Apple	<ul style="list-style-type: none"> the supply of mobile device operating systems

1 Google

1.1 Internet search

Google is dominant in search

Google has a near monopoly in the supply of general search services. Google is estimated to provide 95 percent of general search services in Australia.⁷⁴ On mobile devices, Google's market share for general searches is even higher, at approximately 98 percent.⁷⁵ Competitors to Google, collectively, represent 5 percent of the market.

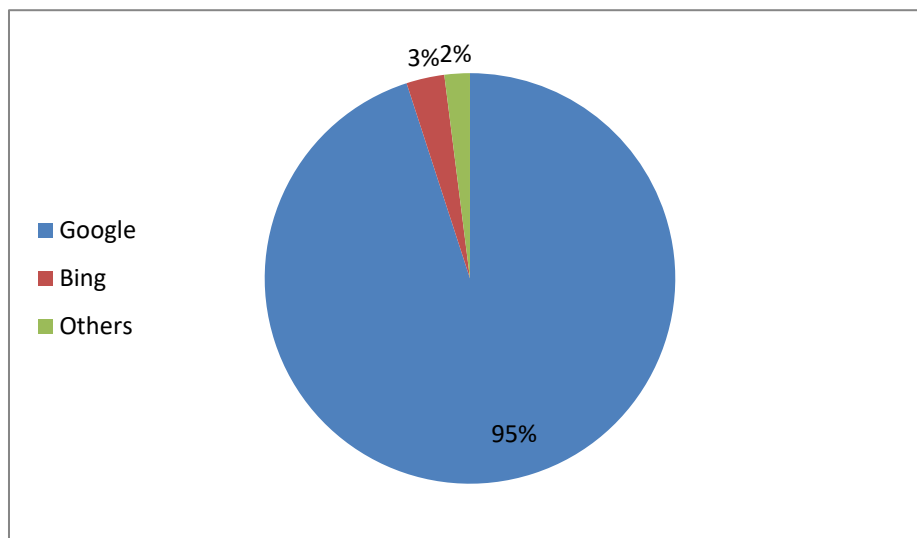
⁷² Case AT.39740 - Google Search (Shopping), Commission decision of 27 June 2017, paras 306-311, <http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf>

⁷³ Case AT.39740 - Google Search (Shopping), Commission decision of 27 June 2017, para 312, <http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf>

⁷⁴ IBIS World, IBIS World Industry Report OD5505 Search Engines in Australia, March 2018.

⁷⁵ Stat Counter, Mobile Search Engine Market share Australia Mar 2017 - Mar 2018, <<http://gs.statcounter.com/search-engine-market-share/mobile/australia>>

Figure 17: Market shares of general search service providers



Google's dominance in Australia is consistent with and relevant to its market position globally. In the EU, the European Commission found that Google has held a dominant position in each national market for general search services since at least 2011.⁷⁶ As noted above, the Commission noted that its conclusion held, notwithstanding the fact that general search services are offered 'free of charge' and regardless of whether general search on static devices constitutes a distinct market from general search on mobile devices.⁷⁷

Alternative search engines do not constrain Google search

Google is not constrained by alternative search engine operators, such as Bing, DuckDuckGo, Yahoo, Ask.com and Baidu. Collectively, these search engines hold around 5 percent market share in Australia.⁷⁸ While Microsoft has invested extensively in improving Bing's search function, it is not a serious threat to Google.⁷⁹ Bing's market share is estimated at around 3 percent and its limited success is largely attributable to its focus on Australian content, as a result of a licensing arrangement with Nine Entertainment and the fact it is the default search engine for devices running on Microsoft's Windows operating system.

A number of search engines have exited the market since 2007 while those remaining struggle to expand. For example, Yahoo abandoned its general search technology and initially partnered with Bing but switched to Google in 2013. Equally, Ask.com abandoned its general search technology in 2010 and started using Google to power its portal. Traffic to these alternative search engines remains marginal.⁸⁰

⁷⁶ Case AT.39740 - Google Search (Shopping), Commission decision of 27 June 2017, para 271, <http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf>

⁷⁷ Case AT.39740 - Google Search (Shopping), Commission decision of 27 June 2017, Summary of Decision, para 8, <http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf>

⁷⁸ IBIS World, IBIS World Industry Report OD5505 Search Engines in Australia, March 2018

⁷⁹ IBIS World, IBIS World Industry Report OD5505 Search Engines in Australia, March 2018

⁸⁰ While the quality of Google's search functionality over rivals is subject to debate among consumers and tech critics, this has not detracted from Google's dominance. For example, critics claim that Bing has a higher search success rate (Web Alive, Rank Higher (Part 2/12) - What Are Australia's Major Search Engines and Directories? <<https://www.webalive.com.au/australias-major-search-engines-and-directories/>>) and that consumers should preference DuckDuckGo because the search engine does not track users' data (Christopher Ratcliff, Say goodbye to Google:

Vertical search services are not substitutable with general search and do not constrain Google. These types of search engines do not use web crawlers but rather search within their own content or the content of third party partners.⁸¹ In any event, Google also provides vertical search services and has used its dominance in general search to promote its own vertical services.⁸²

Low incentives for consumers to switch from Google search

Google is purportedly 'free' to use (in reality, the service is supported by data collection and advertising); therefore, there is a low incentive to switch between search services, particularly as Google's service is perceived as the 'go to' option and the gateway to the internet. Further, there is a low tendency to 'multi-home'; in the Google Shopping case, the European Commission found that despite the technical ability of users to switch between different general search services, only a minority of users who used Google's general search service as their main general search service used other general search services.⁸³

Integration of Google search with other products and services entrenches Google's dominance

Google's dominance in search is further strengthened by its integration with other products and services. In Australia, Google search is the default search function on most web browsers. As noted above, Google search is integrated with Google Chrome and Apple Safari, which collectively dominate the market for internet browsers. Google pays around US\$3 billion per year to remain the default search engine on Safari.⁸⁴

Google search benefits from significant network effects

While it does not solely explain its dominance, Google benefits from network effects. More traffic to Google improves the quality of Google's search service, which in turn drives more users to use Google. The more searches on Google brings more data, which allows Google to further refine its search algorithm. Google also collects data to improve its search algorithm from its non-search services, including Gmail, Google Drive, Google Play, Google Maps, YouTube and Chrome. These applications come pre-installed on Android-operated devices or can be manually downloaded onto mobile devices. Google's advertising activities also benefit from greater use of its search service. Although the user does not pay to use Google, the users' search queries are valuable to advertisers because they effectively identify themselves as potential customers.

High barriers to entry protect Google search

Google is also protected from competition by the presence of high barriers to entry. The development of a search algorithm is cost-intensive and time-consuming, requiring the building of a large index of web

14 alternative search engines, Search Engine Watch, 25 February 2016 <<https://searchenginewatch.com/2016/02/25/say-goodbye-to-google-14-alternative-search-engines/>>

⁸¹ See, eg, discussion in Case AT.39740 - Google Search (Shopping), Commission decision of 27 June 2017 at section 5.2.1 <http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf>

⁸² See, eg, discussion in Case AT.39740 - Google Search (Shopping), Commission decision of 27 June 2017 at section 5.2.1 <http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf>

⁸³ Case AT.39740 - Google Search (Shopping), Commission decision of 27 June 2017, para 309, <http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf>

⁸⁴ Todd Haselton, Google is paying Apple billions per year to remain on the iPhone, Bernstein says, CNBC, 14 August 2017 <<https://www.cnbc.com/2017/08/14/google-paying-apple-3-billion-to-remain-default-search--bernstein.html>>

content to crawl. As a general search service uses search data to refine the relevance of its search results, it needs to receive a certain volume of queries in order to compete viably. It also needs to receive a certain volume of queries in order to improve the relevance of its results for uncommon (so-called 'tail') queries. Google constantly invests to improve its service and a new entrant would have no choice but to attempt to match these investments. Further, the existence of positive feedback effects (the more users use Google, the more advertisers want to advertise with Google) represents an additional barrier to entry.

Further, the existence of brand effects has meant that even well-resourced companies struggle to gain market share. In particular, Bing, which is backed by one of the leading technology companies in the world, Microsoft and therefore is able to invest in its algorithm and web crawler, remains only a marginal presence. Meanwhile Baidu and Yandex may have stronger brand awareness in their respective domestic markets but have struggled to expand into other regions.

1.2 Video content

YouTube holds substantial market power in relation to the supply of video content. According to some sources, YouTube is the second most popular website on the internet behind Google search.⁸⁵ In Australia, 15.4 million users visit YouTube each month, and spend 18 hours and 15 minutes per person, with 78 percent of watch time occurring on smartphones or tablets.⁸⁶ According to the YouTube official blog on 22 June 2017, 1.5 billion logged in viewers visit YouTube every month and on average, viewers spend over an hour a day watching YouTube on mobile devices.⁸⁷ Users are increasingly accessing YouTube in their living rooms, with Alphabet reporting in October 2017 that users are watching over 100 million hours of YouTube on TV sets, representing an increase of 70 percent from the previous year.⁸⁸

YouTube has an unparalleled amount of video content, meaning that there are no significant competitors to the platform. YouTube also benefits from its integration with other Google services, in particular Google uses data gathered from Google search to inform its YouTube platform about a user. This gives YouTube a competitive advantage over other video content providers, as it is better able to target content towards the user's preferences. YouTube also benefits from pre-installation on all Android devices.

1.3 Mobile operating systems

Google holds substantial market power in the market for the supply of mobile device operating systems. Google acquired Android in 2005 and launched the first Android device in 2008. Since then, Android has become the dominant mobile device operating system worldwide. Android is an 'open-source' operating system, meaning that it can be adopted by any device manufacturer and modified to provide different functionality. Australian sales of smartphones show that, since January 2014, 56.8 percent of mobile

⁸⁵ As at 10 April 2018, Alexa, youtube.com Traffic Statistics, 2018 <<https://www.alexa.com/siteinfo/youtube.com>>

⁸⁶ Nielsen IAB Monthly Video Report February 2018

⁸⁷ YouTube, Official Blog, 22 June 2017, <<https://youtube.googleblog.com/2017/06/updates-from-vidcon-more-users-more.html>>

⁸⁸ Peter Kafka, YouTube is taking on TV on its home turf, and it's starting to win, recode, 26 October 2017 <<https://www.recode.net/2017/10/26/16527272/youtube-tv-viewing-100-million-google-alphabet-earnings-q3-october-google>>

devices sold use Android. The next largest mobile device operating system is Apple iOS at 35.8 percent.⁸⁹ Following iOS, the next largest mobile device operating system is Windows, which holds a 5.9 percent market share. Of those smartphones using an 'open-source' or licensable operating system, most notably HTC, Huawei, LG, and Samsung, more than 90 percent use Android.

Android devices come with Google's suite of services pre-installed, including Google search, Chrome, YouTube and Google Play. As described below, Google has imposed restrictions on smartphone manufacturers, preventing them from developing alternative versions of Android, and tying Google's applications and services distributed on Android to other Google's applications, services and Application Programming Interfaces (APIs). This is the subject of an ongoing antitrust investigation by the European Commission.

There are low levels of multi-homing with smartphone devices and low levels of switching. Consumers generally make a decision about purchasing a smartphone based on the value they expect from the operating system and from the applications available for that particular operating system. Multi-homing is limited to the corresponding operating app store (e.g. Google Play or Apple App Store / iTunes), the smartphone manufacturer app store or possibly the network operator app store.⁹⁰

In addition, there are a number of barriers to entry that protect Google's position, including network effects (the more users adopt Android, the more developers write applications for that system). Android users who wish to switch to other operating systems also face significant switching costs, such as losing their applications, data and contacts.⁹¹

The European Commission has reached a preliminary view that Google holds a dominant position in relation to the supply of licensable mobile device operating systems in the EU on the basis of its market share, low levels of multi-homing and switching and barriers to entry, including network effects.

1.4 Internet browsers

Google Chrome is the most used internet browser in Australia, with around 48 percent of Australians using Chrome as their default browser. The nature of barriers to entry in the internet browser market and the degree of integration between Chrome and other Google services serve to reinforce Google's very strong position in this market. Chrome is pre-installed on all Android devices and can be downloaded from the Apple App Store and other mobile application stores for free.

1.5 Digital advertising

Google's dominance in relation to search, video, mobile device operating systems and internet browsers means that it also dominates the supply of digital advertising opportunities. Google earns more advertising revenue than any other company in the world. In 2017, Google generated global advertising

⁸⁹ In 2017, app store revenues from the Apple App Store and Google Play for paid app downloads, in-app purchases and subscriptions totalled \$58.6 billion. These revenues do not include payments made through apps using other methods (eg Uber rides, Netflix subscriptions, banking payments etc.). See Sensor Tower Blog, Global App Revenue Grew 35% in 2017 to nearly \$60 Billion, 5 January 2018 <<https://sensortower.com/blog/app-revenue-and-downloads-2017>>

⁹⁰ Néstor Duch-Brown, The Competitive Landscape of Online Platforms, JRC Digital Economy Working Paper, 2017 <<https://ec.europa.eu/jrc/sites/jrcsh/files/jrc106299.pdf>>

⁹¹ European Commission, Press Release Database, Antitrust: Commission sends Statement of Objections to Google on Android operating system and applications - Factsheet, 2016 <http://europa.eu/rapid/press-release_MEMO-16-1484_en.htm>

revenue of US\$95.38 billion, representing approximately 43 percent of the US\$223.7 billion digital ad revenue market.⁹² In relation to mobile advertising, eMarketer forecasts that nearly US\$50 billion, or 67 percent of Google's net digital ad revenue, will come from mobile advertising in FY2017.⁹³

While Google does not individually report data for Australia, Morgan Stanley estimates that Google's Australian revenue would be around AUD\$2.5 to AUD\$3 billion.⁹⁴ This would give Google approximately 32 to 40 percent share of the advertising market in Australia.⁹⁵

Search advertising makes up the bulk of most online advertising spend, primarily because advertisers believe that search advertising provides unprecedented precision in identifying potential customers, measurability and the highest return on investment.⁹⁶ According to the Deloitte Media Consumer Survey 2015, 'sponsored search' advertising is the most influential on purchase behaviours with 42 percent of respondents rating it in their top three ad spend choices.⁹⁷ Google's AdWords is the dominant provider of search engine advertising in Australia.⁹⁸ W3Techs reports that 85 percent of sites carrying ads use Google ads.⁹⁹ The next closest competitor is Microsoft's Bing Ads, which has a market share of around 3 percent in general search services and does not have sufficient reach to constrain Google.

Google also has a dominant position in relation to display advertising. Google has the world's largest online advertising network and ad exchange, with approximately 2 million publishers on the network and its display ads appearing on more than 12 million webpages.¹⁰⁰ The second largest player – and only serious competitor ad network is Media.net, a collaboration between Yahoo! and Bing, but they provide a more niche service and draw significantly less revenue than AdSense.¹⁰¹ For example, in 2015, Google's advertising revenue was US\$19.1 billion, whereas Media.net's was US\$232 million.¹⁰² Although websites

⁹² Statista, Google's ad revenue from 2001 to 2017 (in billion U.S. dollars), 2018 <<https://www.statista.com/statistics/266249/advertising-revenue-of-google/>>

⁹³ Rani Molla, Google leads the world in digital and mobile ad revenue, recode, 24 July 2017 <<https://www.recode.net/2017/7/24/16020330/google-digital-mobile-ad-revenue-world-leader-facebook-growth>>

⁹⁴ See Stephen Letts, Global internet giants crushing Australian media, ABC News, 29 January 2016 <<http://www.abc.net.au/news/2016-01-29/global-internet-giants-crushing-australian-media/7125458>>

⁹⁵ IAB Australia estimates the total internet advertising market in Australia was worth \$7.6b in FY17, iab Australia, Online advertising spend reaches \$7.6 billion in 2017 financial year, 5 September 2017 <<https://www.iabastralia.com.au/news-and-updates/iab-press-releases/item/22-iab-press-releases/2374-online-advertising-spend-reaches-7-6-billion-in-2017-financial-year>>

⁹⁶ Memorandum to the United States of America Federal Trade Commission <<https://graphics.wsj.com/google-ftc-report/img/ftc-ocr-watermark.pdf>> 10

⁹⁷ Deloitte, Media Consumer Survey 2015, pages 62-63 <<https://www2.deloitte.com/content/dam/Deloitte/au/Documents/technology-media-telecommunications/deloitte-au-tmt-media-consumer-survey-2015-100815.pdf>>

⁹⁸ Darren Davidson, How free rider Google takes a rising share of news profits, The Australian, 21 May 2017 <<https://www.theaustralian.com.au/business/media/how-free-rider-google-takes-a-rising-share-of-news-profits/news-story/a110d2c6e199214b57c6c95e06054de3?metype=anonymous&login=1>>

⁹⁹ W3Techs, Usage of advertising networks for websites, 2018 <<https://w3techs.com/technologies/overview/advertising/all>>

¹⁰⁰ MonetizePros, The Ultimate Guide to AdSense & Ad Networks, 4 June 2015 <<https://monetizepros.com/ad-sales/guide-to-adsense-ad-networks/>>; Built With, Websites Using Google AdSense, 2018 <<https://trends.builtwith.com/websitelist/Google-AdSense>>

¹⁰¹ MonetizePros, The Ultimate Guide to AdSense & Ad Networks, 4 June 2015 <<https://monetizepros.com/ad-sales/guide-to-adsense-ad-networks/>>

¹⁰² Tim Peterson, Google's Ad Revenue Rises in Q4 2015 Despite Continued Price Decline (1 February 2016) <<http://adage.com/article/digital/google-q4-2015-earnings/302462/>>; Monty Munford, Chinese Consortium Acquires Media.Net for US \$900

can manage their own display advertising internally, this is not nearly as effective as Google's display advertising products which target individual consumers based on algorithms that draw on personalised data.

1.6 Ad Tech

Google also dominates the supply of advertising technology, often requiring publishers and advertisers that use Google's advertising services to use its Ad Tech services. Given Google's dominance in search and display advertising, this tying practice has enabled Google to achieve a dominant position at key points in the Ad Tech pipeline:

- Google's DFP product is estimated to have an extremely high share of ad-serving technology; it is the most widely used ad serving technology on the entire internet and in every category (top ten thousand websites, top one hundred thousand websites, and top one million websites). The next largest competitor is AppNexus, which lags behind DFP in all categories. Notably, while DFP is used by 28 percent of the top one million websites, AppNexus is used by only 4.5 percent.¹⁰³
- AdX is widely stated as being the largest ad exchange with an estimated market share of 52 percent.¹⁰⁴ [redacted].¹⁰⁵
- Google's Analytics product is reported to be by far the most widely-used service for analysing web traffic. Between May 2017 and May 2018, Google Analytics was estimated to be used by 64 percent of the top 10,000 websites, 77 percent of the top million websites and 8.1 percent of all sites on the internet.¹⁰⁶ The website W3Tech estimates that Google Analytics is around ten times more widely used than its next nearest rival (Yandex.Metrica).¹⁰⁷

2 Facebook

2.1 Social media

Facebook is dominant in social media

Facebook is the most widely used social media platform in Australia with over 17 million active users per month. Approximately 74 percent of Australians use social media and in February 2018, 97 percent of these users accessed Facebook.¹⁰⁸ According to a recent report approximately 59 percent of all

Million in Third-Largest Ever AdTech Deal (22 August 2016) <<https://www.forbes.com/sites/montymunford/2016/08/22/chinese-consortium-acquires-media-net-for-900-million-in-3rd-largest-ever-adtech-deal/#41af5c06f9c0>>.

¹⁰³ AppNexus v DoubleClick (2018) SimilarTech <<https://www.similartech.com/compare/appnexus-vs-doubleclick>>

¹⁰⁴ Datanyze, 2018

¹⁰⁵ *The Times* and *The Sunday Times* have separate editorial staff, but share the same web domain (www.thetimes.co.uk) and are offered as part of the same digital subscription. While it is possible to separate traffic data between the two publications (e.g. by distinguishing between whether individual articles were published first by *The Times* or *The Sunday Times*) the bulk of our analysis proceeds by treating them as a single entity.

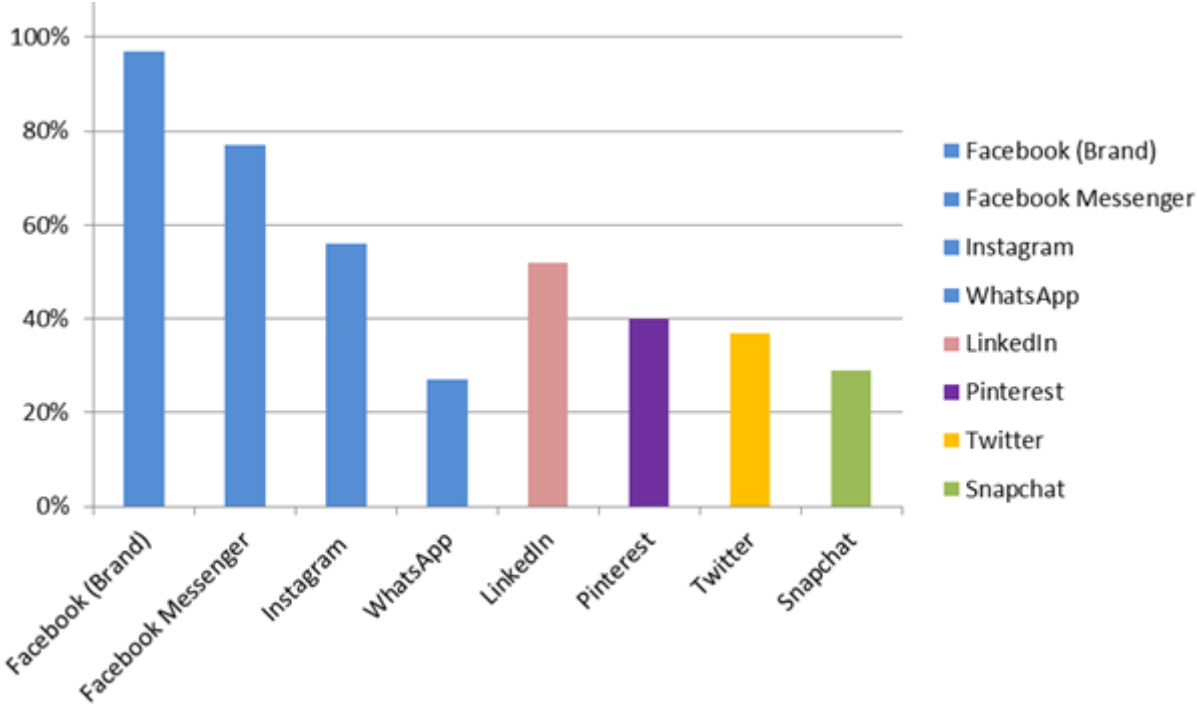
¹⁰⁶ Built With, Google Analytics Usage Statistics (2018) <<https://trends.builtwith.com/analytics/Google-Analytics>>

¹⁰⁷ Matt McGee, As Google Analytics Turns 10, We Ask: How Many Websites Use It?, Marketing Land, 12 November 2015 <<https://marketingland.com/as-google-analytics-turns-10-we-ask-how-many-websites-use-it-151892>>.

¹⁰⁸ Nielsen DRM February 2018

Australians log onto their accounts daily.¹⁰⁹ Facebook also owns four of the five most used social media apps in the world: Facebook, WhatsApp, Facebook Messenger and Instagram. In Australia, Instagram was accessed by 56 percent of social media users in the last month and WhatsApp was accessed by 27 percent of social media users.

Figure 18: Market shares of social media providers (as a percentage of all social media users)



Source: Nielsen DRM February 2018

Alternative social media platforms do not constrain Facebook

After Facebook, the second most popular social media platform is Twitter, which was accessed by 37 percent of users in February 2018 and Snapchat which was accessed by 29 percent of users in the same period. In our experience, alternative platforms have a niche focus and a narrower set of followers than Facebook. For example, Snapchat has a strong following among teenagers and young adults; LinkedIn is targeted at professionals; and in Australia Twitter is most frequently used by journalists, politicians and their immediate networks.

For Facebook, the figures below incorporate all Facebook branded services such as Facebook Messenger and Facebook games, but not Snapchat or WhatsApp, which operate under separate brands. We have also included Facebook Messenger as a separate channel.

¹⁰⁹ Sensis Social Media Report 2017, 22 June 2017, <https://www.sensis.com.au/asset/PDFdirectory/Sensis_Social_Media_Report_2017-Chapter-1.pdf>, page 4

Figure 19: Market shares of social media providers (as a percentage of all social media users)

		Unique Audience	Share	Universe
	Internet universe	23,798		
1	Social Networking	17,537	74%	Of internet universe
2	Facebook (Brand)	17,042	97%	Of social media universe
3	Facebook Messenger (Channel)	13,421	77%	Of social media universe
4	Instagram	9,865	56%	Of social media universe
5	LinkedIn	9,165	52%	Of social media universe
6	Pinterest	7,060	40%	Of social media universe
7	Twitter	6,448	37%	Of social media universe
8	Snapchat	5,071	29%	Of social media universe
9	WhatsApp	4,719	27%	Of social media universe

Source: Nielsen DRM February 2018

In addition, these platforms have a significantly lower user base than Facebook and the vast majority of users are also Facebook users. While Facebook has over 2 billion users worldwide, Twitter has around 320 million, LinkedIn has around 500 million of which only 106 million are active (generally professional) users and Snapchat has around 180 million (generally younger) users. The unique audiences of the largest social media players in Australia (Facebook, Instagram, LinkedIn, Snapchat and Twitter) is 17,368,000. Facebook's share of this audience is 98 percent and the average overlap between Facebook and each of these social media sites is 98-99 percent.¹¹⁰

Even accounting for these platforms, Facebook (or one of its associated companies, Instagram, WhatsApp, Messenger) remains dominant. For example:

- **Instant messaging**

Facebook Messenger is the most popular messenger app in Australia with 13.4 million unique audiences per month, followed by WhatsApp (which is owned by Facebook) with 4.7 million unique audiences per month, followed then by Viber with 1.6 million unique audiences per month.¹¹¹

- **Photo sharing**

Facebook is the most popular social media platforms used for sharing photos, followed by Instagram (owned by Facebook), then Snapchat.

- **Live video streaming**

Data of US internet users conducted in November 2016 showed that Facebook Live was the most commonly used platform for live streaming, followed by Google's YouTube.

¹¹⁰ Nielsen DRM February 2018

¹¹¹ Nielsen DRM February 2018

- **Video sharing**

Although Google's YouTube is the largest video platform and the preferred choice for video consumption among Australians, the next most popular platform is Facebook. The Nielsen data below shows the most popular video based sites on personal computers.¹¹²

Figure 20: Most popular video based sites on PCs

NIELSEN MONTHLY VIDEO DATA - BRAND RANKING, COMPUTER PANEL ONLY*, FEBRUARY 2018, PEOPLE 18+				
Month	Brand	Unique Audience	Population Base	Population Reach % (Ppl 18+)
February	PC Market Line 18+	9,418,473	18,952,500	49.7
February	YouTube	7,293,268	18,952,500	38.5
February	Facebook	4,644,539	18,952,500	24.5
February	News.com.au*	1,852,345	18,952,500	9.8
February	Vimeo Websites	1,603,944	18,952,500	8.5
February	nine.com.au	938,713	18,952,500	5.0
February	smh.com.au	838,886	18,952,500	4.4
February	Netflix	830,811	18,952,500	4.4
February	ABC Online Network	717,644	18,952,500	3.8
February	MSN/Outlook/Bing/Skype	689,302	18,952,500	3.6
February	Twitter	630,373	18,952,500	3.3
February	SBS (Special Broadcasting Service)	394,011	18,952,500	2.1
February	9Now	381,358	18,952,500	2.0
February	The Age	369,694	18,952,500	2.0
February	SWM 7	343,972	18,952,500	1.8
February	Openload	275,055	18,952,500	1.5
February	Time Inc. Network	266,647	18,952,500	1.4
February	Google	253,229	18,952,500	1.3
February	Herald Sun*	251,888	18,952,500	1.3
February	The Daily Telegraph*	232,698	18,952,500	1.2
February	Bunnings Warehouse	225,148	18,952,500	1.2

¹¹² Note that for consistency in ranking, this report only contains video data for computer devices measured via panel. Video consumed on mobile devices is currently unable to be measured via panel and is hence excluded from these rankings

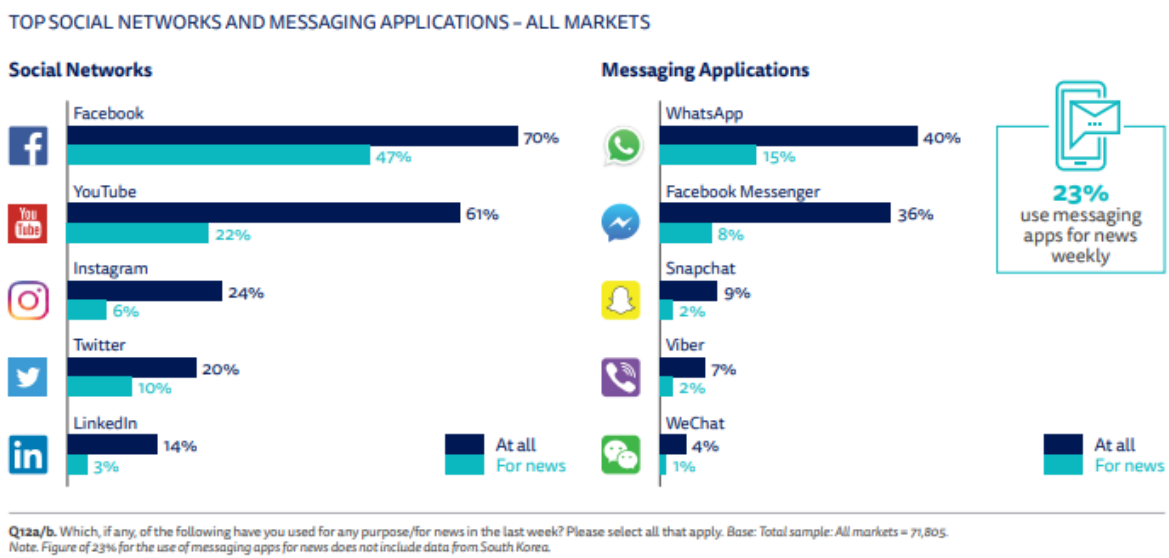
February	CNET	223,093	18,952,500	1.2
February	Dailymotion	187,822	18,952,500	1.0
February	Daily Mail Australia	187,765	18,952,500	1.0
February	Whimn*	179,667	18,952,500	0.9
February	couriermail.com.au*	177,072	18,952,500	0.9

*Brands marked with an asterisk represent metrics from tagged methodology

Source: Nielsen Digital Content Ratings, Video, February 2018, People 18+, Panel Only

As a source of news, Facebook is the clear leader over other social media platforms. According to the Reuters Institute, respondents to their survey use the following social media sites on a weekly basis as a source of news:¹¹³

Figure 21: Most popular social networks and messaging applications



Source: Reuters Institute Digital News Report 2017

More Australian adults access their news via social media than read it in a newspaper or watch it on subscription TV. [redacted].¹¹⁴ Facebook, as the most popular social media platform, therefore has enormous market power in relation to the distribution of news content.

¹¹³ Reuters Institute for the Study of Journalism, Digital News Report 2017, <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>. Note, these statistics take into account respondents from a wide range of countries and therefore differ from Australian-specific statistics

¹¹⁴ [redacted]

Figure 22: [redacted]

Low incentives for consumers to switch from Facebook

Facebook's market power is protected by the significant switching costs consumers face if they choose to leave the platform. Consumers have typically invested significant time on their Facebook profile, including with respect to photos, messages, posts, and friendship networks. Data created on Facebook is unable to be ported to non-Facebook platforms. The cost of abandoning users' digital footprint (including history of messages, photos, posts) and recreating a new identity on a competitor platform is significant. While this may not stop Facebook users from signing up to new forms of social media, it means that Facebook users are unlikely to abandon Facebook altogether.

Integration of Facebook with other products and services entrenches Facebook's dominance

Facebook maintains its position as the world's leading social media platform through its integration with third party websites. Many publishers have a Facebook plugin which allows users to like or share their content through Facebook (e.g. on their Facebook page or through Facebook Messenger) without leaving the website. Facebook is also the most commonly used third party log-in platform. Internet users are often asked to log in to websites, for example, where a purchase will be made or where the platform allows users to store information to be re-visited at a later time. New users are often given the option to log-in to a website by using their Facebook log-in details and that way avoid having to provide their profile details (e.g. name, photo, address) from scratch. Facebook's integration with third party websites represents an additional disincentive to consumers to switch away from the platform as it will inhibit access to these sites.

Facebook benefits from significant network effects

While it is not determinative of market power, Facebook benefits from significant network effects. In particular, Facebook remains the most attractive social media platform because it has the most users worldwide. It is a 'one-stop-shop' for consumers to connect with friends, family and colleagues in the same platform in different ways. The more connections that a user has on Facebook when compared to other social media platforms, the less likely they are to leave Facebook. Further, Facebook's trove of data enables it to improve its service, ensuring it remains appealing to its userbase.

Facebook's enormous user base and the integration with other products and services in turn leads to positive feedback effects, as it allows Facebook to better service advertisers. Facebook collects data on

users' personal information, usage history, frequency and duration of use, location and information about payments and transactions made through the service. Facebook also tracks web browsing behaviour on non-Facebook partner websites which allows it to collect data on consumers who do not use its social media platform. Facebook also collects information from third-party partners about its users. Facebook then markets this highly personalised data to online advertisers.

High barriers to entry protect Facebook

Similar to search platforms, there are considerable costs involved in creating a new social media platform including the costs of software development and marketing. The costs involved in building a reliable brand similar to Facebook's with a loyal advertiser base are significant. Much like Google, Facebook can afford to pay developers and coders attractive salaries. This makes it difficult for new entrants to compete in developing a competing platform. The platforms that have managed to find some success have chosen to focus on niche areas rather than compete head on against Facebook.

2.2 Digital advertising

Facebook's dominance in social media gives it substantial market power in the supply of digital advertising opportunities. eMarketer forecasts that Facebook will achieve US\$34 billion in advertising revenues worldwide this year, which equates to 15 percent of the US\$223.7 billion global advertising market. In 2017, Facebook generated US\$40.7 billion in revenue globally, 98 percent of which was attributable to advertising. Morgan Stanley estimates that Facebook's Australian advertising revenue would be around AUD\$500 to AUD\$600 million.¹¹⁵

Other than Google, there are few viable alternatives to Facebook's advertising platforms for companies seeking to advertise online.¹¹⁶ Although consumers may use different social networks, advertisers tend to seek out the platform with the most reach and frequency. This means that while some advertisers might campaign across multiple platforms, most will use the dominant platform as the focus of their campaign. Smaller businesses that are more restricted with their advertising spend may simply use Google or Facebook to advertise their business.

Facebook has an enormous trove of data that is unmatched by other social media platforms, as result of data collected from its social media services, messaging services and third party logins. Advertisers using Facebook's services can customise their audience based on an extensive range of categories, including demographics, location, behaviours, interests, contact information, and more. The level of detail to which Facebook can target audiences is incredibly specific, with the only limitation being that a segment must include more than 20 individuals. For example, the screenshot below shows a potential ad targeting single people between the age of 18 and 30 in New South Wales, who are interested in baking. Advertisers can also target core audiences, their existing contact list (e.g. a mailing list or membership

¹¹⁵ See Stephen Letts, Global internet giants crushing Australian media, ABC News, 29 January 2016 <<http://www.abc.net.au/news/2016-01-29/global-internet-giants-crushing-australian-media/7125458>>

¹¹⁶ According to the Deloitte Media Consumer Survey 2015, 'sponsored search' advertising is the most influential on purchase behaviours with 42 percent of respondents rating it in their top three while banner advertising (40 percent), advertising through social media platforms (34 percent) and unsponsored search engine result advertising (34 percent) also feature in respondents' top three online advertising influences on purchases. Deloitte, Media Consumer Survey 2015, pages 62 – 63, <<https://www2.deloitte.com/content/dam/Deloitte/au/Documents/technology-media-telecommunications/deloitte-au-tmt-media-consumer-survey-2015-100815.pdf>>

list), or lookalike audiences by using their customer information to find similar Facebook users. Advertisers can use photos, videos, carousels and mini-websites or Instant Articles to communicate with consumers.

Figure 23: Facebook's targeting tools

Edit Audience

Make sure to save your edits once you're done.

Gender ⓘ

All Men Women

Age ⓘ


18 - 30

Locations ⓘ

Australia

New South Wales

Add locations



Detailed Targeting ⓘ

INCLUDE people who match at least ONE of the following ⓘ

Interests > Food and drink > Cooking

Baking

Add demographics, interests or behaviors | Suggestions | Browse


and MUST ALSO match at least ONE of the following ⓘ

Demographics > Relationship > Relationship Status

Single

Add demographics, interests or behaviors | Suggestions | Browse

Exclude People or Narrow Further



Your audience size is **defined**. Good job!

Potential Reach: 92,000 people ⓘ

3 Apple

3.1 Mobile device operating systems

Apple and Google collectively dominate the market for the supply of mobile device operating systems. Unlike Android, Apple devices are supplied as an integrated hardware and software product, which enables Apple to maintain greater control over the user experience on its devices. Australian sales of smartphones show that, since January 2014, 35.8 percent of mobile devices use iOS. As noted above, there are no viable competitors to iOS and Android and the market is characterised by barriers to entry and expansion and low levels of switching and multi-homing.

Apple's App Store is a digital distribution platform for mobile apps using Apple iOS. App developers can provide their apps, which are developed with Apple's iOS, on the iPhone and the App store allows users to download these applications onto their iPhone.¹¹⁷ In addition, like Android, Apple iPhones come with certain Apple applications pre-installed, including Safari, Siri, and iTunes. In 2017, revenues from the Apple App Store for paid app downloads, in-app purchases and subscriptions totalled US\$58.6 billion. These revenues do not include payments made through apps using other methods (e.g. Uber rides, Netflix subscriptions, banking payments etc.).¹¹⁸ Apple retains 30 percent of revenue from App Store sales (15 percent after the first year).

3.5 Do digital platforms engage in behaviour that enhances their market position by excluding competitors or potential competitors, e.g. through the acquisition of rivals or restrictive contracts terms?

Digital platforms impose restrictive contract terms and engage in aggressive mergers and acquisitions in order to neutralise emerging competition and extend their market power. We discuss the restrictive contract terms imposed by digital platforms in Section 4 of this submission. We note that while acquisitions on their own may not always be an issue, they can have the effect of entrenching dominance and foreclosing competitors.

1 Google

Acquisitions have been the cornerstone of Google's growth over the past 20 years. Google has made nearly 200 acquisitions since 2001. These acquisitions have enhanced Google's market power by neutralising potential competitors and increasing data points on users for Google's consumer-facing services (and thereby improving Google's advertising capabilities).

The most significant acquisitions have been:

- **Android**

Acquired in August 2005 for an undisclosed sum, estimated to be around US\$50 million. As discussed above, Android is now the leading mobile device operating system and enhances

¹¹⁷ ACCC, Bendigo and Adelaide Bank & Ors - Authorisation, 31 March 2017, page iii, <<https://www.accc.gov.au/system/files/public-registers/documents/D17%2B40724.pdf>>

¹¹⁸ Sensor Tower Blog, Global App Revenue Grew 35% in 2017 to nearly \$60 Billion, 5 January 2018, <<https://sensortower.com/blog/app-revenue-and-downloads-2017>>

Google's dominance in the supply of other services by pre-installing applications on Android devices and preventing manufacturers from developing alternative versions of Android.

- **YouTube**

Acquired in October 2006 for US\$1.65 billion. As described above, YouTube is the second most popular website after Google search and therefore contributes vast amounts of user data to Google. Since then, Google has acquired more video-related companies whose technologies have been absorbed into YouTube, including an easy-to-use video-creation tool (Directr), video-rendering tech (Zync), and social video software (Omnisio). More recently, YouTube has signalled an interest in content, acquiring Next New Networks in 2011 (becoming YouTube's Next Lab to scout talent) and Vidmaker (for video editing). Google has also rolled out YouTube Red, an ad-free subscription-based version of YouTube, which could point to more content-related acquisitions if the model succeeds.

- **DoubleClick**

Acquired in April 2007 for US\$3.1 billion, with the aim of expanding Google's advertising expertise into display advertising and advertising auctions. At the time of the acquisition, Google primarily acted on the demand-side of the advertising supply chain, servicing advertisers and ad networks, whereas DoubleClick acted on the supply-side, delivering advertisements and reporting on performance. By acquiring DoubleClick, Google vertically integrated its advertising services, becoming a seller, server and reporter. In 2016, Google amended its privacy policy to allow it to merge DoubleClick's massive database of web-browsing records with the names and other personally identifiable information Google has collected from Gmail and other login accounts.¹¹⁹ The practical result of the change is that DoubleClick ads that follow people around on the web may now be customised to them based on personal information Google knows about users.

- **AdMob**

Acquired in November 2009 for US\$750 million. AdMob facilitates mobile display advertising in applications. This represented another acquisition to fill a strategic gap in Google's search and advertising businesses. At the time of the acquisition, smartphones were relatively new and the market for mobile advertising was expanding rapidly. AdMob was one of the first companies to offer in-app advertising; a feature which has helped to support the app industry and, in turn, the capabilities of smartphones.

¹¹⁹ Julie Angwin, Google Has Quietly Dropped Ban on Personally Identifiable Web Tracking, ProPublica, 21 October 2016, <<https://www.propublica.org/article/google-has-quietly-dropped-ban-on-personally-identifiable-web-tracking>>

Figure 24: Google's acquisitions



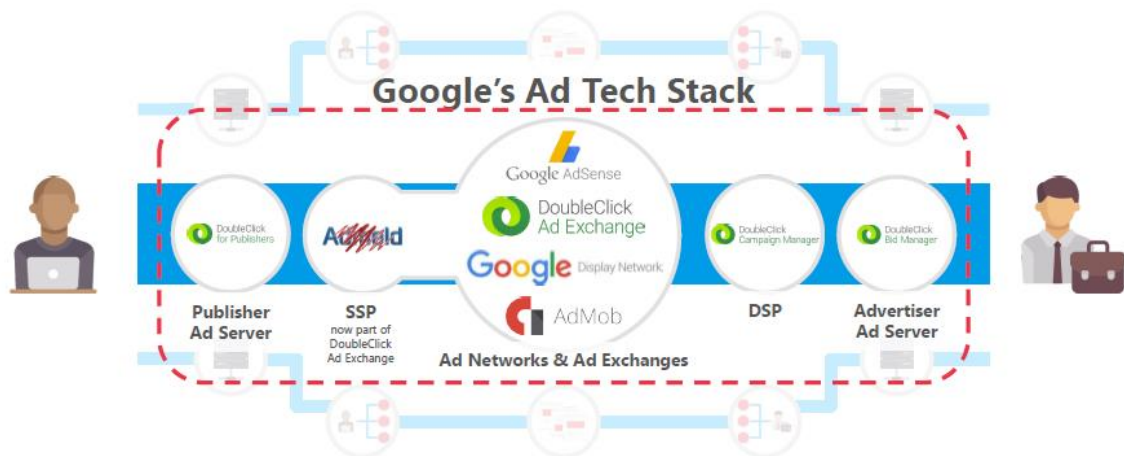
Source: Statista

Google's acquisition of Android in 2005 (thirteen years ago), reportedly for US\$50 million, is not included in the figure above, as it only includes acquisitions above US\$500 million. Google's acquisition of Android is now considered one of its most important transactions as Android is the leading mobile device operating system globally. There are reports that Android has generated US\$31 billion in sales and US\$22 billion in profit since 2008.¹²⁰

As a result of its acquisitions of DoubleClick and AdMob, Google now effectively controls the dominant technologies across every point in the Ad Tech pipeline, as shown in Figure 25 below:

¹²⁰ David Goldman, 'Jury sides with Google in billion dollar Oracle suit', CNN Tech, 26 May 2016, <<http://money.cnn.com/2016/05/26/technology/google-oracle/index.html>>

Figure 25: Google's Ad Tech Stack



More recently, Google has been making strategic acquisitions in the AI space, including acquiring DeepMind, an AI program development company and Kaggle, a data science community. Google also appears to be expanding its hardware device capabilities with acquisitions of Motorola Mobility in 2011 for US\$12.5 billion and some of the smartphone divisions at Taiwan-based HTC for US\$1.1 billion. These acquisitions are expected to be deployed towards Google's Pixel smartphones and Google Home devices.¹²¹

2 Facebook

Facebook also monitors successful new entrants to the social media landscape as potential targets for acquisition. Since 2014, Facebook has acquired more than 60 companies.

- **FriendFeed and DivvyShot**

Facebook has acquired companies to improve the features on its social media platform, including FriendFeed, a real-time aggregator whose 'like' button and 'newsfeed' functions have become Facebook hallmarks since 2009 and DivvyShot, whose photo-sharing technologies have been integrated into Facebook photos.

- **Instagram and tbh**

Facebook has also sought to acquire companies to retain users within the Facebook ecosystem who might otherwise gravitate to new platforms. For instance, Facebook acquired Instagram in September 2012 for US\$1 billion in order to bring Instagram within the Facebook ecosystem, effectively aligning the two social networks and removing a competitor. Instagram could have threatened Facebook's position as the leading social network, had it continued as an independent company or been acquired by a rival.

Similarly, in 2017, Facebook acquired tbh, an anonymous app for answering questions about yourself or your friends that is predominantly used by high schoolers.¹²²

¹²¹ Clark Boyd, GAFA: What can we learn from their acquisition strategies?, The Startup, 10 December 2017, <<https://medium.com/swlh/gafa-what-can-we-learn-from-their-acquisition-strategies-ac4523be70e5>>

¹²² Kurt Wagner, Facebook's acquisition of TBH isn't like when it bought Instagram, Recode, 17 October 2017, <<https://www.recode.net/2017/10/17/16491182/facebook-tbh-acquisition-instagram-comparison-snapchat>>

- **SnapTu and Beluga**

Facebook has also acquired companies to facilitate its mobile application services. Facebook acquired SnapTu and Beluga to build the foundations for the Facebook mobile app and Messenger.

- **WhatsApp**

Facebook acquired WhatsApp in October 2014 for US\$19 billion. Facebook already had a competitor service in Messenger but acquired WhatsApp in order to control more of the world's platform for instant online communication. This acquisition neutralised a nascent threat to Facebook's status as the leading social network, particularly as WhatsApp has greater market penetration outside of North America. Had a competitor acquired WhatsApp, it could have developed into a fully-fledged social network with the scale to challenge Facebook. Facebook has yet to monetise WhatsApp, but it is expected that this will occur in the future. WhatsApp recently announced that it would launch a Business app, allowing businesses to create profiles and make use of automated and smart messaging tools to communicate with consumers. It has been speculated that these Business profiles will eventually be monetised.

- **Atlas Solutions**

Facebook has also acquired a number of companies in the digital advertising space. Most significantly, Facebook acquired Atlas Solutions in 2013 and then absorbed and re-designed its ad-serving and ad campaigns' performance measurement capabilities into Audience Network.

When Facebook has been unsuccessful in acquiring emerging competitors, it tends to imitate them, blunting their points of distinction in the market. For example, although Facebook was unsuccessful in acquiring Snapchat in 2012, Facebook launched 'Instagram Stories', a video-sharing function on its Instagram platform that has similar functionality to Snapchat. Instagram has now surpassed Snapchat as the more popular short-video sharing platform. In May 2017, Instagram boasted 200 million people using Instagram Stories daily, whereas Snapchat has around 160 million daily users worldwide.

3 Apple

Apple has acquired nearly 100 companies since 1988 and is increasingly focusing on content in its merger and acquisitions strategies.

- **Texture**

Apple acquired Texture in March 2018. Texture is a magazine virtual newsstand known as the 'Netflix of magazine publishing' that gives readers access to around 200 magazines for a monthly fee of \$9.99.¹²³ Apple is planning to launch its own premium news subscription service in an upgraded version of the Apple News app, arriving sometime in the next year.¹²⁴ This was not Apple's first acquisition in the publishing space; in 2014, Apple acquired Dutch digital magazine

¹²³ id Lunden, Apple acquires digital newsstand Texture as it doubles down on content 'from trusted sources', Tech Crunch, 13 March 2018, <<https://techcrunch.com/2018/03/12/apple-acquires-digital-newsstand-texture-as-it-doubles-down-on-content-from-trusted-sources/>>

¹²⁴ Sarah Perez, Apple to launch a premium news subscription service, report says, Tech Crunch, 18 April 2018, <<https://techcrunch.com/2018/04/17/apple-to-launch-a-premium-news-subscription-service-report-says/>>

startup Prss (a platform for publishers to create tablet-friendly magazines) to help build Apple News.¹²⁵

- **Shazam**

Apple has also made several acquisitions adjacent to the publishing and media sector. In December 2017, Apple acquired Shazam, an app that identifies songs, movies, TV shows and commercials from short audio snippets.¹²⁶ There is speculation Apple will integrate the technology into Apple Music, which could impact referrals to competitor music service Spotify.¹²⁷ As such, the European Commission is currently assessing whether the acquisition may have an adverse effect on competition in the European Economic Area.¹²⁸

- **Beats and BookLamp**

In 2014, Apple acquired subscription-based music streaming service Beats Music which is now part of Apple Music.¹²⁹ Also in 2014, Apple acquired BookLamp, referred to as 'Pandora for books', which scanned the writing style of books users liked and suggested similar novels or authors.¹³⁰ BookLamp's technology has since been absorbed into Apple's iBook software.

¹²⁵ Darrell Etherington, PRSS Digital Magazine Platform Acquired by Apple, Tech Crunch, 24 September 2014, <<https://techcrunch.com/2014/09/23/prss-digital-magazine-platform-acquired-by-apple/>>

¹²⁶ Micah Singleton, Apple confirms it has acquired Shazam (11 December 2017) The Verge <<https://www.theverge.com/2017/12/11/16761984/apple-shazam-acquisition>>

¹²⁷ Ashley Carman, Apple's Shazam acquisition to be examined by the European Commission, The Verge, 6 February 2018, <<https://www.theverge.com/2018/2/6/16979356/apple-shazam-acquisition-eu-merger-deal>>

¹²⁸ European Commission, Mergers: Commission to assess the acquisition of Shazam by Apple, Press Release Database, 6 February 2018, <http://europa.eu/rapid/press-release_IP-18-664_en.htm>

¹²⁹ Neil Hughes, Apple officially closes on \$3B purchase of Beats headphones & streaming service, Apple Insider, 1 August 2014, <<https://appleinsider.com/articles/14/08/01/apple-officially-closes-on-3b-purchase-of-beats-headphones-streaming-service>>

¹³⁰ Josh Constine, Apple Secretly Acquired 'Pandora For Books' Startup BookLamp to Battle Amazon, Tech Crunch, 26 July 2014, <<https://techcrunch.com/2014/07/25/apple-booklamp/>>

Section 4: Anti-competitive practices of the digital platforms

- 3.6 Describe the nature of any impacts (positive or negative) that digital platforms are having on media content creators? What are the causes of these impacts? Are these impacts temporary or ongoing?
- 3.7 What are the advantages and disadvantages for media content creators of using digital platforms to publish or distribute their content?
- 3.8 What terms and conditions do digital platforms offer media content creators to publish or distribute their content? How do they differ from those offered by other distributors of media content? Do digital platforms offer different terms to different media content creators?

The impacts that digital platforms are having on media content creators are fundamental and ongoing. Combined, Facebook and Google directly influence about three quarters of internet traffic.¹³¹

[Redacted].¹³² These platforms therefore exert a strong influence on how readers access and engage with News Corp Australia's content.

1 Positive impacts of the digital platforms

In terms of positive impacts, digital platforms have:

- Initially facilitated publishers' access to a wider range of readers via referral services, thereby providing publishers with incoming visitor traffic and advertising revenue, as well as potentially to subscription revenue (however, as described below, platforms have since become destinations as they seek to retain users within their ecosystems);
- The exposure given to publishers on a digital platform can, theoretically and assuming readers actually click through, lead to increased brand awareness and open up publishers to new readers;
- Digital platforms may allow for better matching between a reader's interests and relevant media content, for instance, as a result of searching for specific content or the sharing of content between peers (although the algorithms used by digital platforms are opaque and are ultimately designed to benefit their commercial interests); and
- Digital platforms have improved accessibility of news content by making content easy to find and load including on mobile devices, which provides greater opportunity for readers to access content at their own convenience.

2 Significant negative impacts of the digital platforms

Undermining the virtuous circle

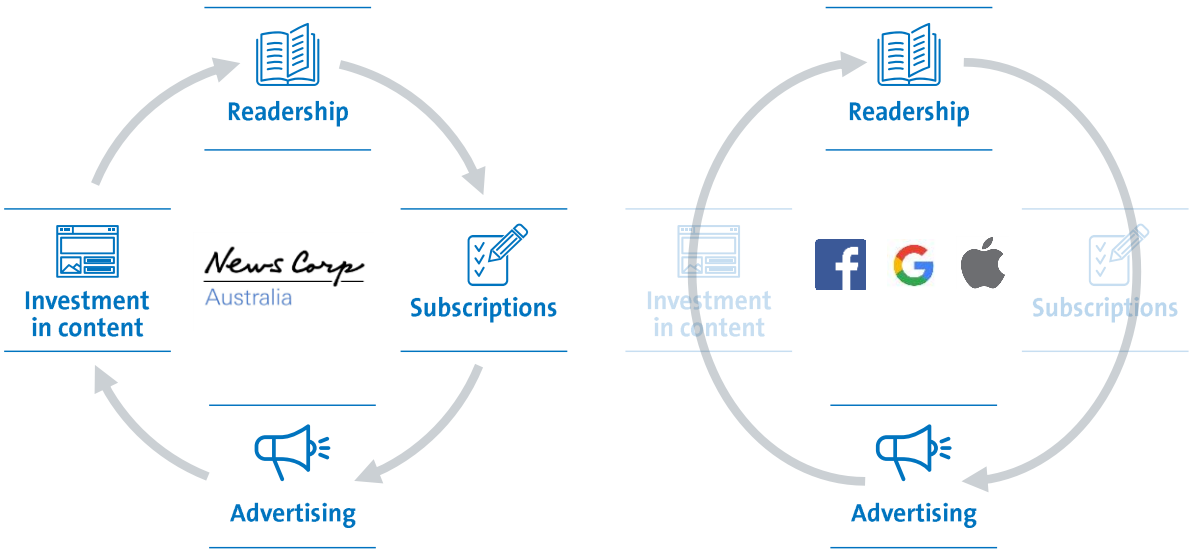
Prior to the advent of digital platforms, the creation of news and journalism followed a virtuous circle whereby readership drove subscription revenue, which drove advertising spend, which, in turn, drove

¹³¹ Anthony Cuthbertson, Who Controls the Internet? Facebook and Google Dominance Could Cause the 'Death of the Web', Newsweek, 2 November 2017, <<http://www.newsweek.com/facebook-google-internet-traffic-net-neutrality-monopoly-699286>>

¹³² [redacted]

investment in content. While digital platforms have had some positive impacts, they must be balanced against the significant negative impacts. Fundamentally, digital platforms have undermined this virtuous circle by treating news as an add-on to the consumer-facing services and showcasing as much content for free as possible. As consumers gravitate to the platforms so too do advertisers, further undermining the sustainability of publishers' business models.

Figure 26: Undermining the virtuous circle



Foreclosing competition from publishers for both readers and advertisers

Digital platforms are engaging in various strategies to entrench their dominance and to foreclose competition from publishers for both readers and advertisers, including by:

- Entrenching their role as intermediaries, which is leading to fragmentation of content and brand dilution and depriving publishers of the opportunity to monetise content;
- Ranking or prioritising certain types of content and undermining paywalls through 'standards' and 'policies' that benefit their own business models;
- Tying the supply of advertising technology services with other services, including the acquisition of data and the supply of advertising services;
- Refusing to supply publishers with data or compromising data interoperability so that publishers remain dependent on the platforms and at a competitive disadvantage;
- Changing algorithms with little to no notice and refusing to supply publishers with information on how the algorithms work and which content is prioritised; and

- Engaging in leveraging strategies to extend their dominance into adjacent markets, in particular advertising technology and content distribution.

Unavoidable trading partners – detrimental unilateral terms and conditions

Publishers are forced to accept the terms of access offered by the platforms, as their dominance means they represent unavoidable trading partners. Further, the terms of access and the algorithms adopted by the platforms to execute these terms can be – and readily are – changed unilaterally by the platform. Such terms would not otherwise be accepted but for the risk of losing visibility and traffic on the platform.

The particular practices of Google, Facebook and Apple are detailed below.

3 Google

Google has engaged in a number of practices that evidence the exercise of market power and Google has been the subject of antitrust investigations including from the US, EU and Canada, some of which are still ongoing. We refer to Annexure 1 for a description of investigations and inquiries relating to Google. In September 2017, Google was fined €2.4 billion by the European Commission for manipulating search results in favour of its own comparison shopping service.

In relation to news and journalism, Google has imposed various conditions and restrictions on publishers, which have the effect of allocating traffic and prioritising content that benefit Google, to the detriment of publishers and ultimately consumers. Publishers that resist these practices are penalised by demotion or exclusion from the search results page. News highlights the following examples.

3.1 Scraping / Snippets

Google does not originate content but rather scrapes content from third party publishers and then displays that content in search results. While Google now allows a publisher to opt-out of their content being scraped, as Google is dominant in search, the lack of visibility on the platform results in a substantial decline in traffic. Google therefore represents an unavoidable trading partner and publishers are compelled to have their content scraped.

Since December 2017, Google has been scraping longer snippets of content in search results. Snippets allow users to consider the identified search keywords in context and determine whether the search result is relevant. However, longer snippets effectively allow users to scan news articles and understand their substance, removing the need to click on the link and navigate to the full content article. Below is an example of the Google search results for the search terms 'Cardinal Pell'.

Figure 27: Google search results for 'Cardinal Pell'



Outsell conducted a survey about the online and offline news preferences of 2,787 US news consumers. The survey results indicated that a full 44 percent of visitors to Google News scan headlines without accessing newspapers' individual sites. When accessing 'news right now', 57 percent of respondents went to a digital source and 31 percent were likely to turn to a news aggregator like Google or Google News than a newspaper website (8 percent).¹³³

3.2 'First Click Free'

Google operated a First Click Free (FCF) policy from 2008 to 2017. FCF was a coercive arrangement that dictated that publishers of premium content (e.g. locked content, content behind a paywall and subscription content) had to give users access to a certain number of articles per day, per user, per browser to appear in Google search results. Originally, Google did not allow publishers to cap the number of articles that could be viewed under the FCF policy. Google later revised this position, allowing publishers to cap the number of freely accessible articles at five, and subsequently three, per day. In practice, this meant that only three percent of users saw a paywall.

Users could easily circumvent the cap restriction. For example, a user accessing *The Australian* using two different browsers (e.g. Chrome and Safari) on three different devices (e.g. smartphone, desktop and tablet) could read 18 stories for free per news publication per day. Further, users could also circumvent the cap by clearing their cookies.

Through FCF, Google in effect forced subscription publishers to choose between two unattractive options: either submit to FCF, allowing users to access much or all their content for free and thereby blunting their incentive to subscribe; or withdraw from it and suffer an immediate decline in visibility on Google search that would result in a loss of traffic and revenue from subscription conversions. The effect

¹³³ TechCrunch, Report: 44% Of Google News Visitors Scan Headlines, Don't Click Through, 20 January 2010, <<https://techcrunch.com/2010/01/19/outsell-google-news/>>; see also Caitlin Dewey, 6 in 10 of you will share this link without reading it, a new, depressing study says, 16 June 2017, Washington Post, https://www.washingtonpost.com/news/the-intersect/wp/2016/06/16/six-in-10-of-you-will-share-this-link-without-reading-it-according-to-a-new-and-depressing-study/?noredirect=on&utm_term=.335987bb6a73

of the FCF policy was to make Google the central gateway to news content and to undermine publishers' efforts to create a direct relationship with customers via subscriptions.

In February 2017, *The Wall Street Journal* made the decision to no longer accept Google's FCF coercive arrangement. As a result, traffic from Google search referrals to *The Wall Street Journal* plunged by 44 percent and referrals from Google News were down 89 percent in August 2017 compared with a year earlier.¹³⁴ At the same time, *The Wall Street Journal* also experienced a four-fold increase in the rate of visitors converting to paying customers. Even after this, Google maintained: "For the many publishers who already take advantage of this approach, it provides the ability to protect their business model and the opportunity to convert people who sample their content into paying customers".¹³⁵

On 2 October 2017, Google retracted the FCF policy and replaced it with Flexible Sampling, which allows publishers to select the number of paywall articles they provide to Google search users for free. This was the first time Google allowed publishers to charge search users for all locked articles, rather than force them to give the first three away for free. The change has made a meaningful difference to publishers of subscriber-only/locked content. [redacted]¹³⁶

Figure 28: [redacted]

Figure 29: [redacted]

The changes brought about by the cessation of FCF clearly illustrate the power that Google wields over publishers' business models – in this case subscription – through coercive arrangements and also the significant losses experienced by publishers as a result of FCF over a long period of time. It is not yet clear how Flexible Sampling will impact overall search indexing for publishers with locked content, especially if a publisher does not provide content in the AMP format (see below).

3.3 Accelerated Mobile Pages

Google has recently developed AMP software, which Google launched in 2015 as a way to improve the performance of web content on mobile devices. The adoption of AMP software is growing exponentially: between February and October 2017, it grew 87 percent. The format is standardised, with limited audience measurability, heavily restricted ad formats and a lack of technical features. The stated

¹³⁴ Lara O'Reilly, CMO Today: Google Drops 'First Click Free,' Facebook Mid-Roll Ad Performance; French Ad Retouching Law, *The Wall Street Journal*, 2 October 2017, <<https://www.wsj.com/articles/cmo-today-google-drops-first-click-free-facebook-mid-roll-ad-performance-french-ad-retouching-law-1506945000>>

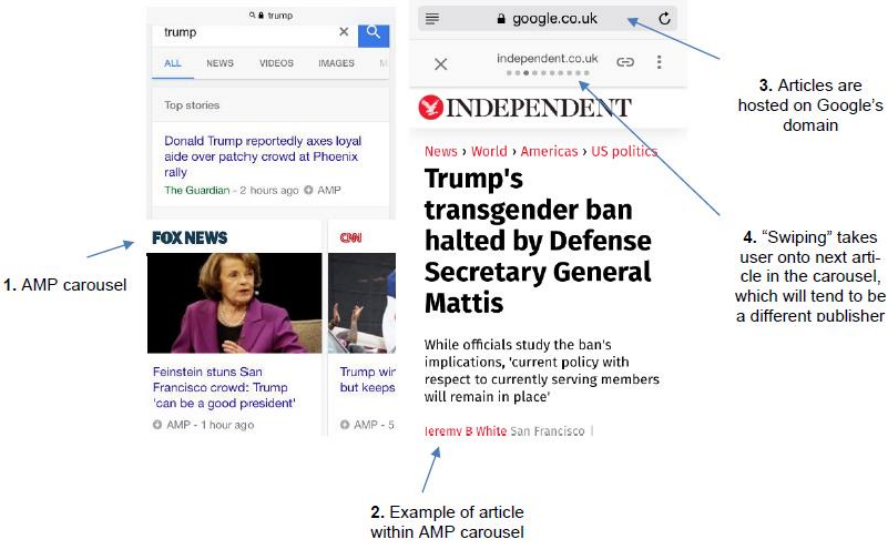
¹³⁵ [redacted] The Digital News Report: Australia 2017 found that 83 percent of consumers access their news from free sources: News & Media Research Centre, Digital News Report: Australia 2017, page 52, <<http://apo.org.au/system/files/95161/apo-nid95161-346236.pdf>>

¹³⁶ [redacted]

aim was to speed up mobile web pages. In fact, AMP pages do not load faster, their speed mostly comes from the fact they are pre-loaded in the Google cache.

Like with FCF, publishers that do not agree to provide articles in AMP format are demoted in the search results page, regardless of their relevance to the user's search query. If a user clicks on an AMP article, they will be taken to the carousel, which allows them to swipe left or right between articles from different publishers. As a result of the format standardisation, there is little scope for publishers to differentiate the 'look and feel' of their content from other publishers. This undermines the brand value of publishers, undermines the ability of consumers to identify sources over time and gives the impression that all sites/content on the carousel are in some sense 'Google approved'.

Figure 30: AMP news carousel



Case Study 1: search for 'Barnaby Joyce' results on AMP

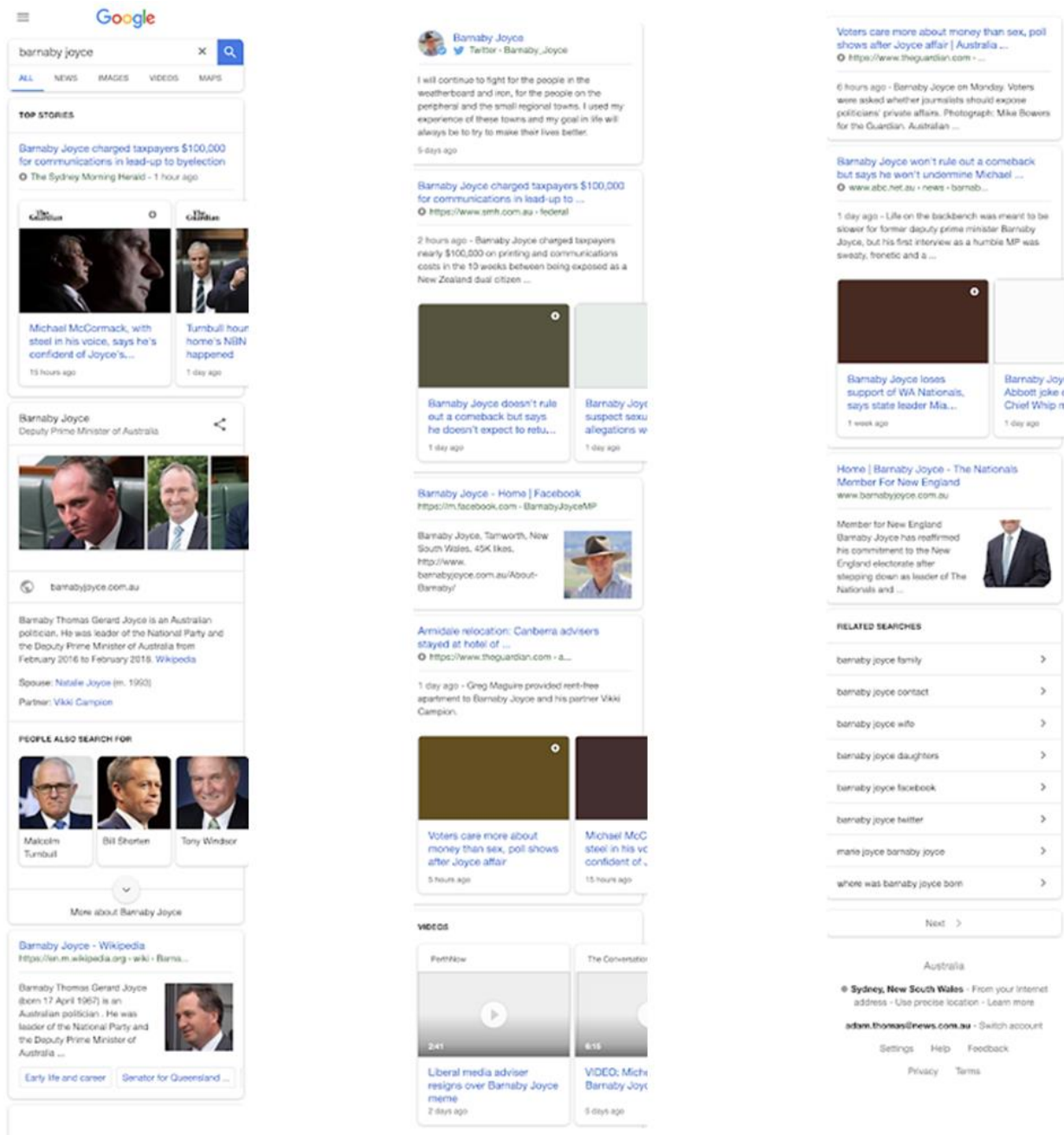
On 6 February 2018, *The Daily Telegraph* broke the story that Barnaby Joyce was expecting a child with his former communications staffer Vikki Campion. News Corp Australia continued to follow the story as new information emerged.

On 1 March 2018, a Google search from a mobile device of 'Barnaby Joyce' revealed no News Corp Australia sites on the first page of results and almost all of the results on the first page were AMP articles.

At the time, News.com.au only had AMP enabled pages for its Technology and Travel sections. The only non-AMP articles returned by the search were pages from Twitter, Wikipedia and Facebook.

The results showed four carousels each containing ten AMP articles. The first carousel had a collection of AMP articles from multiple publishers. The other three carousels contained articles from a single AMP-enabled publisher: one carousel with ten articles from *The Sydney Morning Herald*, one carousel with ten articles from *Guardian Australia*, and one carousel with ten articles from the ABC.

Figure 31: Search results from mobile device on 1 March 2018 of 'Barnaby Joyce'



A central feature of AMP is that Google hosts and serves all content itself. Whereas clicking on a link to a traditional mobile web page will result in a user navigating to the publisher's website, a user who clicks on an AMP article will not leave the Google ecosystem.

There are two main consequences of Google hosting AMP articles, which impact on publishers' revenues:

- Advertisements in AMP must be relatively streamlined, smaller and less interactive to facilitate quick-loading. As a result, these ads are usually far less attention grabbing for users, resulting in less clicks and less revenue; and

- Since AMP articles appear in Google's ecosystem and not the publisher's, audience traffic is sometimes attributed to the platform. This dilutes the traffic figures of the publisher, making them appear less attractive to advertisers and thus reduces their ability to price effectively.

The ability to measure traffic and track user behaviour is crucial for publishers to market ad inventory competitively. As such, publishers have devised ways to receive attribution for their content on AMP. In particular, publishers have been able to use a Nielsen Software Development Kit tag, which allows Nielsen to allocate audiences to the publisher correctly for AMP content. This 'workaround' is still relatively experimental and time consuming to implement, and has only been implemented by a small number of publishers to date. Furthermore, although the tool attributes audience to the publisher, it is unable to prevent the audiences being attributed to the platform as well. This means there is double counting and publishers' traffic figures are still diluted, relative to the platform's figures. However, in the absence of any other way to get attribution from AMP, publishers have no choice but to accept this imperfect solution.

Google also imposes significant restrictions on publishers' ability to get unique audience figures in the AMP environment. Publishers need unique audience figures to ensure traffic figures are accurate and not overinflated when users view content multiple times. Following mounting pressure from publishers as to these restrictions, Google recently announced that the AMP format would support 'first party tracking' of users. This means, for example, that if a consumer reads an article on *The Daily Telegraph* in AMP format and then reads a non-AMP article in *The Daily Telegraph* article, that behaviour can be tracked as a single user ID. However, in order to do this, a publisher must use tracking software which is designed and hosted server-side (i.e. on Google servers).

Publishers wishing to take advantage of this feature therefore have no choice but to use Google Analytics, and cannot use third-party analytics software. Where a publisher does use Google Analytics to track unique audiences, Google collects data on the user and shares it with publishers under its terms. In other words, publishers remain dependent on Google for access to data. Google also limits publishers' ability to reconcile the data collected from AMP articles with non-AMP articles, in particular if publishers intend to use the data for commercial purposes.

Although there is now some limited ability to track users on AMP, no such solution has been provided for the tracking of ads. While Google has not publicly given an explanation for why this is the case, the technology required for the tracking of users and ads is very similar, making it doubtful that the reason is technical feasibility. A more likely explanation is that restricting publishers' access to ad tracking advances Google's advertising business. Only Google has the ability to track ads across AMP and publishers' inability to track ads across different channels reduces the relative attractiveness of their direct advertising business.

Google argues that AMP is 'open source', however, it is aggressively investing in AMP with the ultimate goal that all sites should be built on AMP software in the future. For instance, Google has released new AMP functionality for AMP emails and AMP blogs. AMP emails can be built with interactive elements such as carousels, lists and video players. Businesses are likely to use AMP emails in place of static newsletters in the future. The software is still in developer preview and the rollout is dependent upon email clients (e.g. Outlook and Hotmail) supporting the software. Importantly, the software will work seamlessly with Gmail, which is a large proportion of the Australian audience. Similarly, Wordpress, an open-source content management system used by a third of the world's websites, announced a

partnership with Google AMP in 2016. The Wordpress AMP plugin makes it easier to enable AMP experiences by default for Wordpress sites.

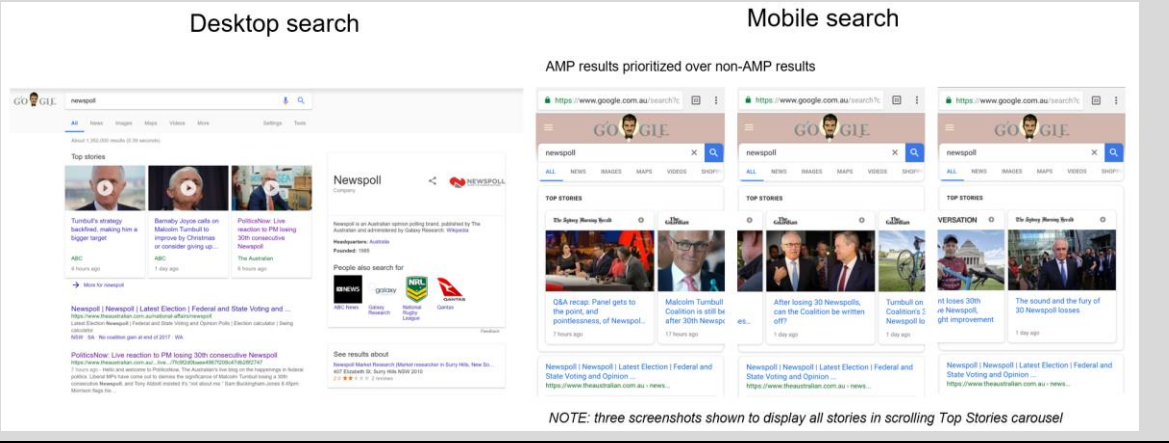
The take up of AMP emails and AMP blogs is likely to increase pressure on publishers to submit to AMP functionality. Indeed, publishers are being faced with essentially the same predicament as FCF: submit to AMP and lose brand diversity, audience measurability and advertising revenue but gain a higher ranking in Google search results, or maintain control over data, brand value and advertising but face search result demotion.

Case Study 2: Newspoll 9 April 2018

The Newspoll release of 9 April 2018 provides an instructive example of how Google penalises publishers that do not participate in the AMP platform by not displaying their content in relevant search results.

Newspoll is *The Australian's* brand and *The Australian* is the first to publish the results of the poll each time it is released (generally every two weeks). The 9 April 2018 Newspoll was the thirtieth time that the Coalition lost to Labor under Mr Turnbull's leadership. Mr Turnbull had used the same as one of his reasons for challenging Tony Abbott's leadership.

While *The Australian* featured prominently in Google search results for Newspoll on desktop searches, results from AMP-enabled publishers were prioritised on mobile search results and not a single article from *The Australian* was displayed in the Top Stories carousel because *The Australian* does not provide premium (subscriber-only) content in AMP format.



3.4 Subscribe with Google

Google now offers to sell subscription services on behalf of publishers, using engagement data Google collects from publishers, including from hosting AMP articles. 'Subscribe with Google' allows users to subscribe to news publications using their Google accounts, removing the need to create a new account and enter payment details. However, News Corp Australia understands the program is offered on a 'most-favoured nation' basis (i.e. publishers are prevented from undercutting the subscription prices offered by Google) with limited data sharing opportunities (Google has access to first-party data). Exact

revenue shares have not been made public; reports suggest that Google will take 5 to 15 percent of all subscription revenue publishers acquire through Subscribe with Google.¹³⁷

Where a 'most-favoured nation' provision is in place, if a publisher identifies an opportunity to market or sell their products differently, and that opportunity would be a 'better' deal than Google has, the publisher must give Google the same deal. Given Google's scale, it is more likely than not that the publisher would not undercut the subscription prices offered by Google with another deal due to the potential revenue impacts.

3.5 Ad-blocking on Chrome

Google Chrome is the most used internet browser in Australia, with around 48 percent of Australians using Chrome (aggregated across all devices – desktop, mobile and tablet). In March 2017, the Coalition for Better Ads released their initial Better Ad Standards, which provide guidelines on ad practices they consider unacceptable across both desktop and mobile platforms.¹³⁸ The Coalition is made up of 16 companies, including Google, Facebook and Microsoft. News Corp (US) is also a member.

In November 2017, Google announced it would be enforcing these standards on its Google Chrome browser by automatically blocking all ads which do not meet the standards. This policy came into force less than two months later, in February 2018, with many Australian websites not meeting the requirements.¹³⁹

Examples of advertisements that will fail the Better Ads Standard include video ads that auto-play at full volume, flashing display ads, pop-ups with hard-to-find exit buttons and prestitial ads that block users from seeing content on the page.¹⁴⁰ Google will evaluate a sample of pages from a publisher's site and give it a Passing, Warning or Failing grade based the percentage of page views in the sample that do not meet the Better Ads Standards. The Coalition guidelines establish 'Failing' thresholds as:

- 7.5 percent of page views in the first two months of the program;
- 5 percent in the four months following; and
- 2.5 percent thereafter.

Publishers can see whether they have received any 'Warning' or 'Failing' assessments in Google's Ad Experience Report, made available in the Google search console. A site will have 30 days after being notified of violations to fix any non-compliant ad experiences. If it fails to do so, Chrome will begin to block ads on that site. Site owners that receive a Failing assessment and have their ads blocked in Chrome can request a review from the Ad Experience Report after making necessary changes to non-compliant ad experiences.

¹³⁷ Matt Rourke, 'Google is not the oracle of absolute truth': Digital giant reckons with its responsibility to journalism, The Globe and Mail, 23 March 2018 <<https://www.theglobeandmail.com/report-on-business/google-is-not-the-oracle-of-absolute-truth-digital-giant-reckons-with-its-responsibility-to-journalism/article38346930/>>

¹³⁸ Coalition for Better Ads, Initial Better Ads Standards: Least preferred ad experiences for desktop web and mobile web <<https://www.betterads.org/standards/>>

¹³⁹ Paul Wallbank, Google to block autoplay video ads in just 57 days time, Mumbrella, 21 December 2017 <<https://mumbrella.com.au/google-to-start-blocking-non-compliant-ads-in-february-491063>>

¹⁴⁰ Ginny Marvin, FAQ: Google Chrome ad blocking is here. Everything you need to know, Marketing Land, 15 February 2018 <<https://marketingland.com/faq-google-chrome-ad-blocking-everything-need-know-234483>>

The move by Google is driven largely in response to the rising adoption of third party ad blockers on desktop and the threat of adoption on mobile. However, the effect of this change will be to reduce the choice in advertising opportunities that publishers can offer on their sites. [Redacted].¹⁴¹ This will have a significant impact on advertising revenues as video advertisements are higher yielding.

We note a story in *The Wall Street Journal* regarding this topic, which quoted a Silicon Valley antitrust lawyer who said: “This looks like an effort by Google to use its strong market position in browsers in order to prevent users from adopting third-party apps that block ads Google wants to make money from.”¹⁴²

Meanwhile, the video auto-play ad-blocking restrictions will not apply to video content sites like YouTube, as video ads have yet to be tested and are so far exempt (pre-roll and mid-roll within video content).

We refer to the case studies below to demonstrate the impact of Google's ad-blocking policy.

Case Study 3: Current YouTube user experience (Chrome 65)

The user arrives on the YouTube homepage (Figure 32).

If the user clicks on a selected video thumbnail, one of two things (generally) happens:

- Skippable pre-roll ad plays automatically with sound on unless muted by device (skippable at 6 seconds) (Figure 33); or
- Non-skippable 6 second ad pre-roll ad plays automatically with sound on unless muted by device (Figure 34).

There is no indication this will change in Chrome 66 or beyond.

¹⁴¹ [Redacted]

¹⁴² Douglas Macmillan, Google Will Block Spammy Ads (Just Not Many of Its Own), *The Wall Street Journal*, 14 February 2018 <<https://www.wsj.com/articles/how-google-swayed-efforts-to-block-annoying-online-ads-1518623663?emailToken=6b9f57c2355888cdf5b3e13c3b13c056Czneic1NSqb%2FIqqvop%2FkwWdggulFvjOoD36y5FQm%2BvzF5DSVrveSpDoX LmhJnebpDhPtkBwukM3u6NvqfIFEXgiabpvx9XXW5PSbXbankKQKPZv4k626pBwZiL5DV2Pn>>

Figure 32: YouTube home page

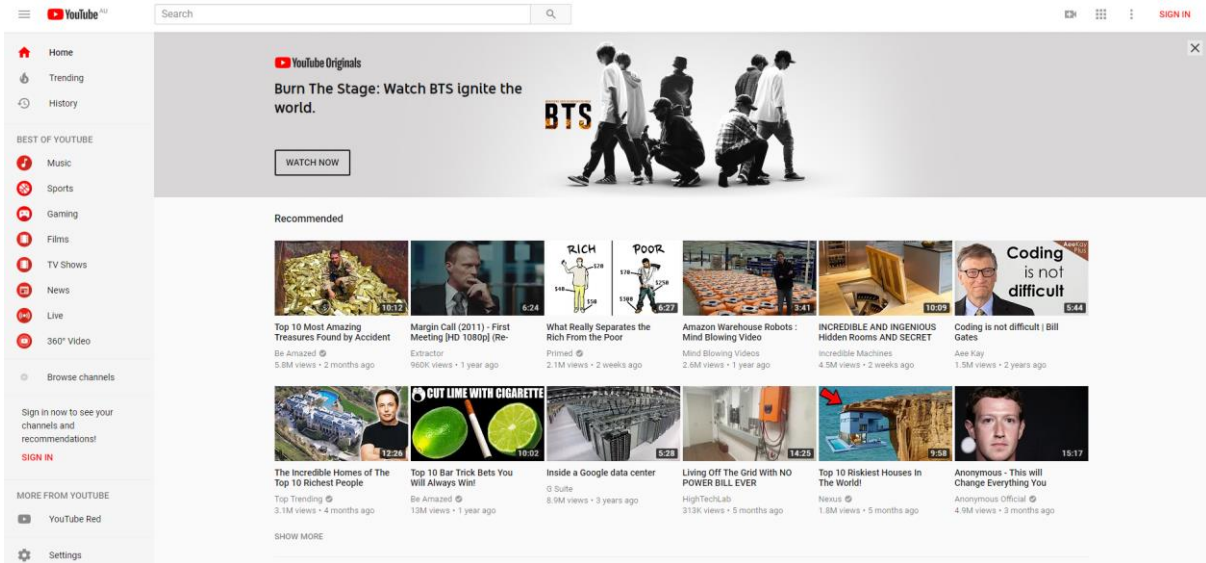


Figure 33: Skippable pre-roll ad

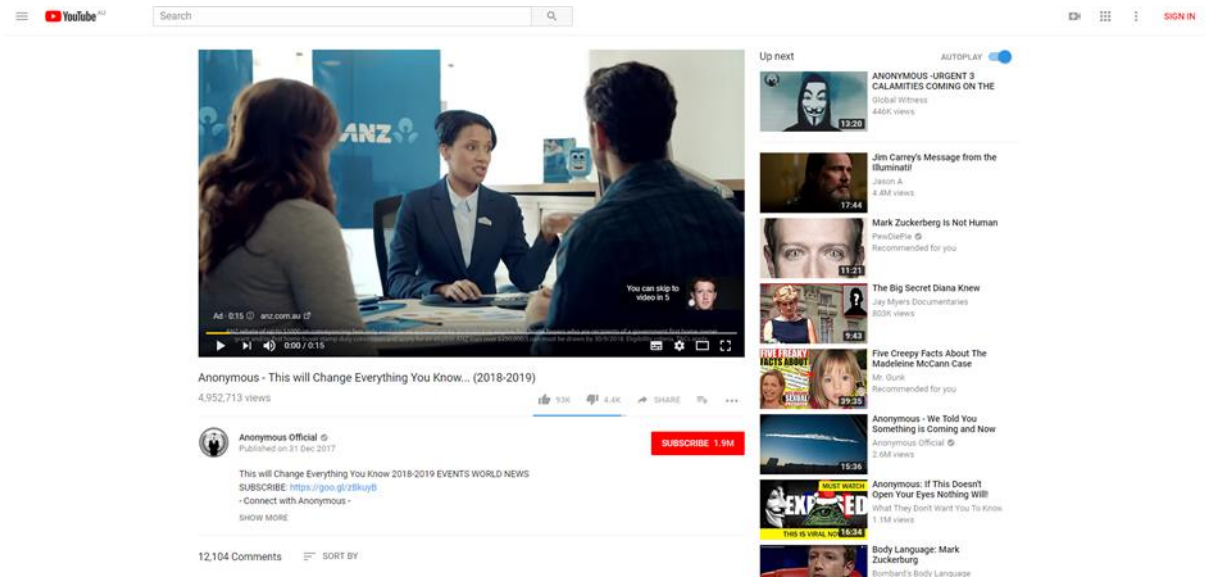
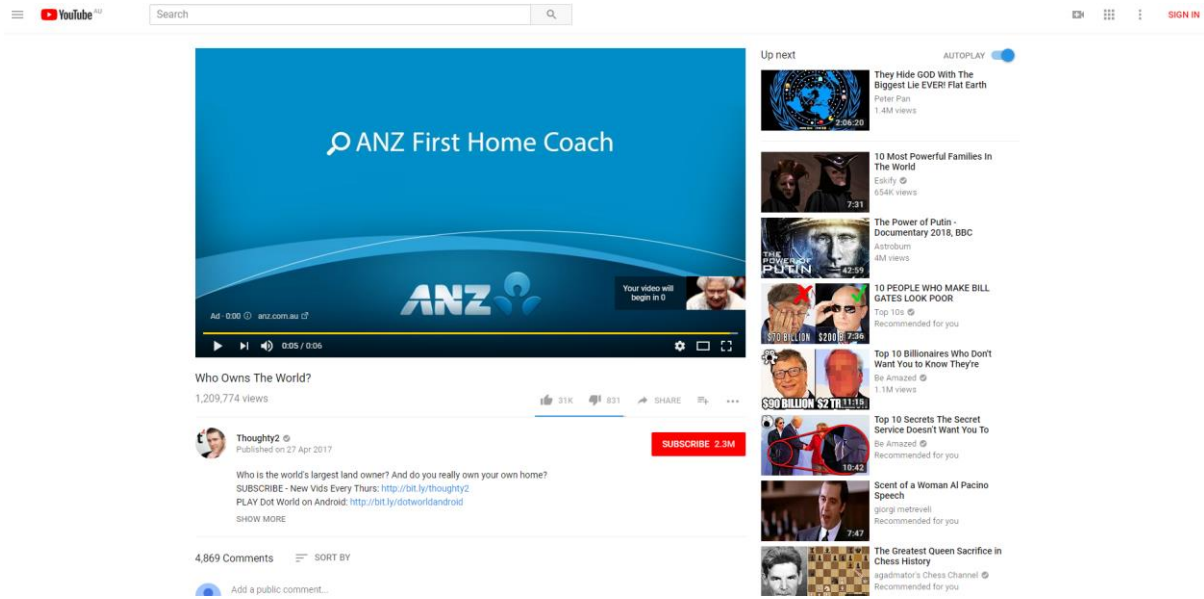


Figure 34: Non-skippable pre-roll ad



Case Study 4: Current News.com.au experience

The user will click on a selected article on the home page.

Video pre-roll within article plays automatically with sound on (Figure 35). The video will appear below the headline before the contents of the article.

Figure 35: News.com.au experience on Chrome 65

Hipages Fox Sports SEEK Carsales RealEstate News Network

news.com.au

HOME BUNDLE
UNLIMITED DATA + PHONE LINE \$59.99/mth
MIN FEE \$189.94
NBN READY
TRG

National World Lifestyle | Travel | Entertainment | Technology Finance | Sport

innovation motoring

Town planner fined \$1250 for malicious damage

A HIGH ranking town planner has explained why she repeatedly keyed a luxury car in a prestigious Sydney suburb.

Ben Graham news.com.au APRIL 13, 2018 9:53AM

Video Image

thousands of spectators

Woman caught keying car on dash cam

AS JANE Flanagan strolled through the cashed-up streets of Sydney's Dover Heights on her way to work she casually took her key out and made a 10cm gash into a Audi four-wheel-drive.

The nonchalant town planner did this five times in total, but little did she know that someone was watching.

n Hansimikali caught the 53-year-old twice on a dashcam he had

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Case Study 5: Future News.com.au experience (Chrome 66)

Chrome 66 (launching on 17 April 2018) will block auto-play video with sound on.

Autoplay with sound is allowed if:

- User has interacted with the domain (click, tap, etc.);
- On desktop, the user's Media Engagement Index threshold has been crossed, meaning the user has previously played video with sound;
- On mobile, the user has added the site to his or her home screen.

The Media Engagement Index measures an individual's propensity to consume media on a site. Chrome's current approach is a ratio of visits to significant media playback events per origin:

- Consumption of the media (audio/video) must be greater than 7 seconds;
- Audio must be present and unmuted;
- Tab with video is active;
- Size of the video (in px) must be greater than 200x140.

Chrome calculates a media engagement score which is highest on sites where media is played on a regular basis. When it is high enough, media playback is allowed to auto-play on desktop only.

Google's announcement is partly related to the Coalition for Better Ads Standards, however, as the standards have not been ratified locally, the browser-level ad filtering that came into play in the US on 15 February 2018 has not come into effect in Australia. As yet, there is no timeline for the rollout of the Better Ads Standards.

[Redacted]

3.6 Pre-installation of Google search and other Google services

As noted above, the European Commission has reached a preliminary finding that Google has abused its dominant position in relation to the supply of the Android mobile device operating system. The Commission has found that manufacturers wishing to pre-install Google's app store for Android, Google Play, on their mobile devices are compelled by Google to install Google search as well and to set it as the default search engine on those devices. In addition, manufacturers wanting to pre-install Google Play or Google search also have to install Google Chrome. If a manufacturer wishes to pre-install Google's proprietary apps, including Google Play or Google search, on any of its devices, Google requires it to enter into an anti-fragmentation agreement. Such agreement forces the manufacturer to refrain from selling devices running on alternative versions (forks) of Android that are not developed by Google.

The relevance to publishers of the pre-installation of Google search on Android-operated devices is that it entrenches Google's dominance in search and exacerbates the problems with scraping, AMP and ad-blocking referred to above.

4 Facebook

Like Google, Facebook has engaged in practices that entrench intermediation between publishers and readers and undermine publishers' efforts to create a direct relationship with readers. We refer to Annexure 1 for a description of investigations and inquiries relating to Facebook. News Corp Australia highlights the following examples.

4.1 Instant articles

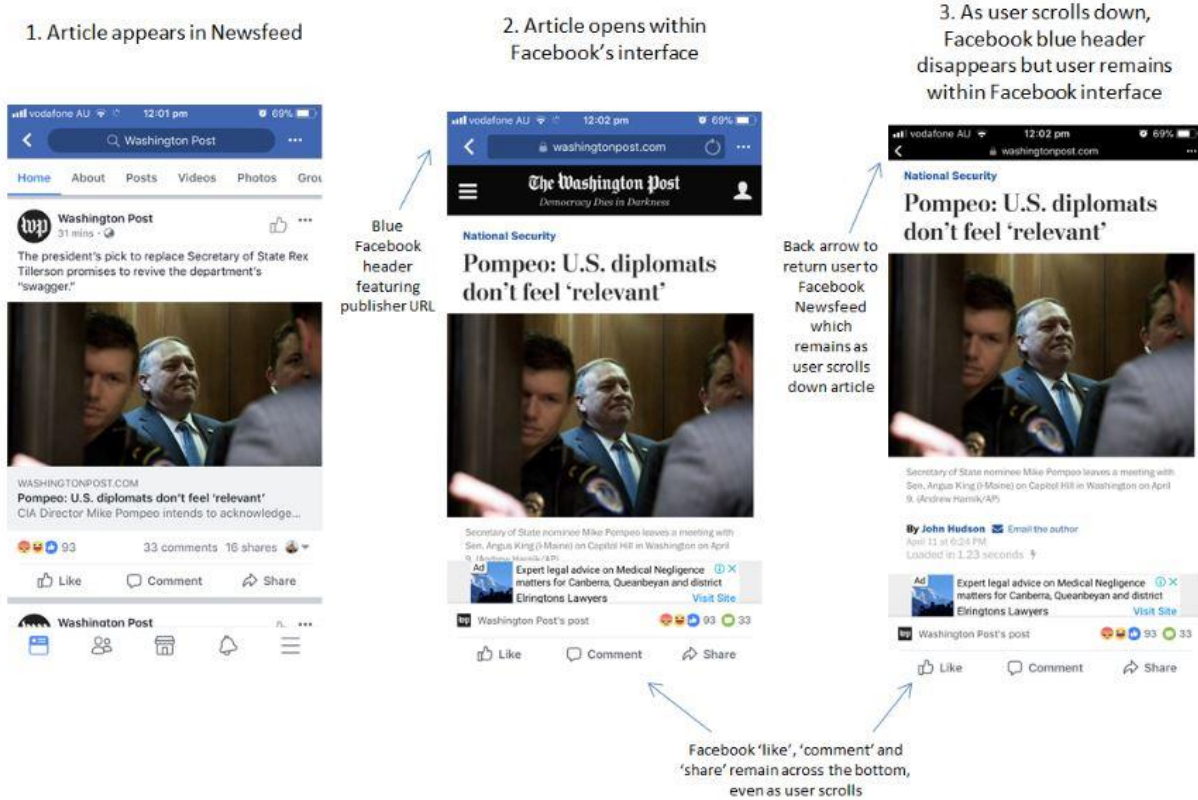
Instant Articles is a Facebook-native news format for mobile devices. Like AMP, Facebook hosts Instant Articles directly and users do not need to navigate to an external site to view the full content article. Instant Articles is Facebook's preferred platform to drive audience traffic and subscriptions, and publishers are actively encouraged by the platform to place their content in Instant Articles format. These articles are more likely to be seen in a user's newsfeed than non-Instant Article content.

Like AMP, Instant Articles impose a number of restrictions on publishers. Although paywalls are supported, they face limitations: for publishers with metered models the meter is set at 10 articles, while for publishers with a freemium model the publisher determines what content is locked.¹⁴³

It is important to highlight that publishers cannot offer direct subscriptions to consumers in Instant Articles. Facebook is currently testing a subscription service in Instant Articles with a group of publishers, and under the terms, data from Instant Articles is gathered by Facebook rather than the publisher. News Corp Australia does not participate in Instant Articles or this subscription service.

Additionally, similar to AMP, Instant Articles limit the type of ad formats available to content creators in order to facilitate quick loading.

Figure 36: Facebook Instant Articles



Since Instant Articles open within Facebook's native interface, users only view the publisher's website indirectly. While Facebook does not share the data it collects from hosting articles on its server, publishers can use existing analytics and attribution systems to track article traffic in Instant Articles.¹⁴⁴ While this allows publishers to track users reading Instant Articles, the format of Instant Articles actively discourages users from engaging with their content beyond the single article. As seen in the diagram above, Instant Articles display an arrow to return to the Facebook newsfeed in the top left corner of the

¹⁴³ Campbell Brown, Alex Hardiman and Sameera Salari, Testing Subscriptions Support in Instant Articles, Facebook Media, 19 October 2017 <<https://media.fb.com/2017/10/19/testing-subscriptions-support-in-instant-articles/>>

¹⁴⁴ Facebook for developers, Instant Articles: Frequently Asked Questions, How does Instant Articles influence referral traffic? <<https://developers.facebook.com/docs/instant-articles/faq>>

Instant Article at all times, even as the user scrolls down. Facebook interactions including like, comment and share also remain across the bottom of the screen as the user reads the article. Publishers cannot link back to their homepage in Instant Articles, preventing users from viewing any article other than the one they open from Facebook within the native browser. For example, in the diagram above, clicking *The Washington Post* header simply refreshes the article and does not actually take the user to the publisher's website or homepage. Clicking any item within the menu stack on the top left of the header also only refreshes the page within the native browser. As a result, Instant Articles encourage users to return to the Facebook newsfeed rather than engage with further content from the publisher, lowering overall traffic as a result.

It is our view that Instant Articles does not represent a value proposition and therefore we do not participate.

4.2 Algorithm change

On 12 January 2018, Facebook announced an immediate change to its algorithm¹⁴⁵ to prioritise what is shared by a user's friends and family, reducing the amount of content that a user will see from third parties. Facebook CEO Mark Zuckerberg indicated that as a result of this change, the amount of news content users will see on their newsfeed would be reduced by 20 percent.¹⁴⁶

[Redacted]¹⁴⁷

Meanwhile, Facebook has benefited from the change in terms of increased prices per ad impressions. According to AdStage, since the algorithm change came into effect, the number of ad impressions Facebook delivered in newsfeeds in January was down year over year, and although ad impressions were up in February, it was at a much smaller rate than previous months. However, fewer ad impressions has not been reflected in lower ad prices. In January, Facebook CPMs were up 122 percent year over year and in February, CPMs were up 77 percent.¹⁴⁸

5 Apple

Apple engages in various practices that seek to control the relationship publishers have with readers in a way that benefits their business models, to the detriment of publishers. News Corp Australia highlights the following examples.

5.1 Apple App Store

Publishers who wish to place apps on devices running on iOS must adhere to Apple's rules around payments and subscriptions. In particular, Apple prohibits publishers from offering or promoting a direct subscription to iOS users via apps that are placed in the App Store. If a publisher offers a direct subscription, their app will be rejected by Apple for inclusion in the App Store or removed from the App Store itself. As a result, publishers that rely on a digital subscription model are forced to offer an iTunes

¹⁴⁵ Mark Zuckerberg, Facebook announcement, Facebook, 12 January 2018 <<https://www.facebook.com/zuck/posts/10104413015393571>>

¹⁴⁶ Julia Carrie Wong, Rupert Murdoch tells Facebook: pay 'trusted' publishers for their content, The Guardian, 23 January 2018 <<https://www.theguardian.com/technology/2018/jan/22/rupert-murdoch-facebook-should-pay-news-publishers>>

¹⁴⁷ [redacted]

¹⁴⁸ Kurt Wagner and Rani Molla, Facebook ad costs spiked higher after a big change to its News Feed algorithm, Recode, 7 March 2018 <<https://www.recode.net/2018/3/7/17087468/facebook-ad-prices-increase-algorithm-news-feed>>

subscription, which gives Apple a 30 percent royalty in the first year (15 percent after the first year) and means that Apple controls the customer relationship.¹⁴⁹ Apple also controls publishers' ability to increase price for existing customers as customers have to opt-in again every time there is a price change or the subscription is automatically cancelled. [Redacted]

5.2 Apple News

Media content creators have been invited onto Apple News but under severely restricted content and advertising requirements. Apple News features a 'for you' section, which is data driven and uses News Corp Australia's content to personalise the user's experience. If News Corp Australia content features in this section then monetisation is shared between Apple and News Corp Australia on a 50/50 split. There is also a backfill arrangement if we cannot sell our own advertising inventory. Under this arrangement, Apple takes a 30 percent share of this revenue (15 percent after the first year), leaving us with 70 percent (85 percent after the first year).¹⁵⁰

To participate in Apple News publishers are required to adhere to strict layout and design guidelines. These guidelines include restrictions on the use of text, images, audio and video, maps, social media usage and the overall structure of each content page.¹⁵¹ These guidelines are set by Apple to ensure all the publishers' pages are cohesive within the Apple News app environment and fit with the Apple brand guidelines. The restrictive nature of these requirements means news content providers lose their brand equity and give that content association to Apple.

If a user chooses to take a subscription out via Apple News, rather than being redirected to the publishers' site to make the purchase, they are directed to make the purchase within the Apple App Store. This means that Apple maintains ownership of the customer relationship of any subscriber the publisher acquires through Apple News and the royalty payments, as outlined previously, apply to that subscription. Further, publishers' access to data on Apple News is limited. Apple shares readership statistics, however specific demographic information is aggregated.

Another problem with Apple News is that while they have a subscription facility, they do not promote subscriber content in Top News or Trending Stories, which drives the vast majority of user engagement. Two case studies are presented below where Apple News promoted 'free' (to consumer) versions of stories (effectively, rewrites) from other publishers that originated from *The Australian* but were only available to subscribers.

¹⁴⁹ Apple Developer, App Store, Offering subscriptions <<https://developer.apple.com/app-store/subscriptions/>>

¹⁵⁰ Apple Developer, App Store, Offering subscriptions <<https://developer.apple.com/app-store/subscriptions/>>

¹⁵¹ Apple Developer, Apple News Format Reference <https://developer.apple.com/library/content/documentation/General/Conceptual/Apple_News_Format_Ref/ComponentOverview.html#//apple_ref/doc/uid/TP40015408-CH140-SW1>

Case Study 6: Terrorism exclusive/Newsroll

Despite allowing publishers to sell subscriptions (via iTunes only) to content in Apple News, Apple refuses to promote subscriber content in the For You and Top Stories sections, which are the key entry points to Apple News. However, while *The Australian* was participating in Apple News, there were a number of examples where Apple actively promoted a free version from another publisher of a story that originated from *The Australian's* exclusive content.

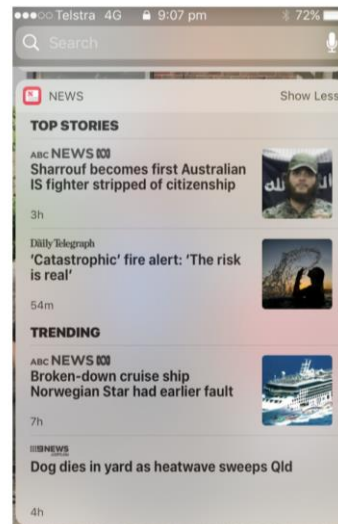
Khaled Sharrouf exclusive story

On 11 February 2017, *The Weekend Australian* exclusively broke the news that IS fighter Khaled Sharrouf had become the first to have his Australian citizenship stripped under new laws. Apple News promoted the ABC's free version of the story at the top of Apple News, exposing it to a large audience.

Paul Maley's exclusive on Khaled Sharrouf being stripped of citizenship (subscriber only content)

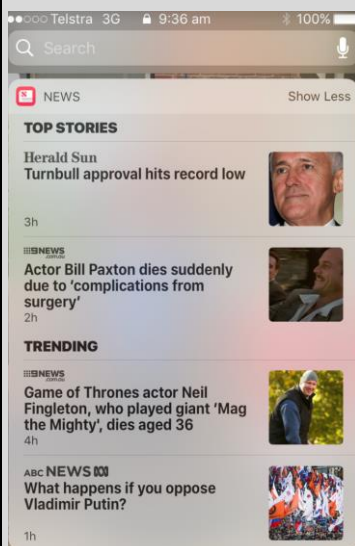


Apple News promoting the ABC's free rewrite of The Australian's exclusive



Newsroll

Prior to *The Australian's* exit from Apple News in May 2017, Apple promoted free coverage of Newsroll instead of *The Australian's* subscriber only content.



Section 5: Effects on content creators

3.9 Have digital platforms changed the price, quality or choice of media content for Australian consumers? If so, what are the implications of this for media content creators? For example, how easily can media content creators offer access to subscriber only content via digital platforms and how readily can they obtain brand attribution for content accessed via digital platforms?

The anti-competitive practices of digital platforms have undermined content creators' ability to access subscription and advertising revenues. Excessive intermediation between content creators and consumers has also led to brand dilution and lower levels of engagement. The fragmentation of news publications into diffuse and individualised articles means content creators often struggle to obtain attribution for their content and consumers struggle to identify the source of the article.

The ultimate effect of these practices is reduced incentives on content creators to invest in quality, original and diverse content. In this Section, we address the effects of the practices outlined in Section 4 on content creation. In Section 6, we deal with the effects on the advertising market, for both publishers (sellers of ad inventory) and advertisers. In Section 7, we deal with the effects of digital platforms on consumers.

1 Access to revenue streams

Consumers who take out a subscription are less likely to use a digital platform as a source of information and more likely to develop a direct relationship with the publisher (e.g. by navigating immediately to the publisher's website). Digital platforms therefore have an incentive to discriminate against subscription websites in order to keep users dependent on the digital platform as a source of news, reinforcing their dominance and generating greater opportunities for data collection and monetisation via advertising. As digital platforms are also directly involved in advertising intermediation services, they have a further incentive to discriminate against subscription-funded news websites, which generally feature less advertising.

As described in Section 4, digital platforms engage in various practices that undermine publishers' efforts to monetise content via subscriptions, in particular, digital platforms:

- use 'standards' and 'policies' to discriminate against subscription-funded content and prioritise ad-funded content (FCF, AMP, Instant Articles and Apple News); and
- seek to control how subscriptions are offered in a way that allows them to own the customer relationship and receive a share of subscription revenues (Subscribe with Google, Instant Articles, Apple App Store).

In addition, as described in detail in Section 6 below, digital platforms are increasingly undermining publishers' ability to access advertising revenues. The effect of these practices is a substantial reduction in revenues that publishers can use to invest in content creation.

2 Brand dilution and lower levels of engagement

The aggregation and presentation of news articles on digital platforms, such as Google, is leading to brand dilution and reduced reader engagement with a publisher's whole product. For instance, AMP

allows users to easily swipe through articles by different publishers and encourages readers to return to the Google search page.¹⁵² The fact that users remain on the Google server and are not referred to the publisher's website prevents publishers from enticing users to read articles on other topics that may be of interest to them, which could potentially increase brand loyalty. We have found that the effort required to publish AMP-compliant articles is not reflected in an increase in unique traffic but rather a cannibalisation of existing readers that might otherwise have consumed articles hosted on our own websites.

Analytics indicate that readers engage less with AMP content than with content hosted on publishers' own websites. The restrictive format of AMP reduces publishers' ability to differentiate the 'look and feel' of their articles from other publishers. AMP templates are not as rich as regular mobile web pages, meaning that the design and content features available on publishers own mobile platforms and sites are not available on AMP – including video, which impacts overall audience engagement rates.¹⁵³

[Redacted]¹⁵⁴

Facebook Instant Articles and Apple News also lead to brand dilution by presenting publishers' articles within the platform's ecosystem and restricting the scope for publishers to distinguish their content or link to their external websites.

3 Difficulty with obtaining brand attribution

Digital platforms have also made it increasingly difficult for original content creators to obtain attribution for their work. Publishers rely on attribution in distributed sources as a gateway to drive traffic back to their own website or app where they can monetise other content.

The presentation of articles on digital platforms makes it more difficult for consumers to ascertain what publisher is the originator of content, particularly at the point of entry. For example, five Facebook posts from five publishers might all be sharing stories covering a single news event. One may be original and four may simply be rewrites. The Facebook user would have no way of determining which of the five was the originator (i.e. which publisher had invested the time and money in creating the content). The same logic applies to Google search, Google News, Apple News.

The fragmentation of news articles on digital platforms also means all articles start to look similar, making it challenging for consumers to identify the source of quality news content. A recent study undertaken by the Reuters Institute found striking differences between the ability of consumers to correctly attribute the brand of content they accessed directly, and content they accessed through search or social media platforms.¹⁵⁵ The results suggest that people remember the original source of news accessed via digital platforms less than half of the time. This is corroborated by focus group studies, which have found participants often credit gateways like Facebook or Twitter for breaking news stories.

¹⁵² [Redacted]

¹⁵³ [Redacted]

¹⁵⁴ [Redacted]

¹⁵⁵ Nic Newman, Digital News Report: Overview and Key Findings of the 2017 Report, Reuters Institute, 2017 <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>

Case Study 7: Reuters Institute survey on awareness of news sources

The Reuters Institute conducted a study of 3,000 users in the UK, who had their desktop internet usage tracked. Within 48 hours of their tracked usage, the users were surveyed about what they could remember about news stories they viewed and the brand. The results found that the percentage of people who correctly attributed the news brand that produced the story was:

- 81 percent when the content was accessed directly
- 37 percent when accessed via search
- 47 percent when accessed via social media (44 percent for Facebook specifically)

In stark contrast, a much greater proportion of users could remember the gateway through which they reached the content: 67 percent of users could remember finding the news story through social media, and 57 percent of users could remember finding the news story through a search engine. This supports the proposition that platforms, rather than content creators, are being credited for news content.

The problems of attribution are likely to be exacerbated by formats such as Instant Articles and AMP. As noted in Section 4, the 'look and feel' of articles presented in these formats is homogenised and the content is hosted by the platform with easy navigation back to the platform. It is therefore very likely that attribution for mobile news will be diluted even further.

4 Reduced incentives to invest in original and diverse content

The ultimate effect of these practices is to reduce incentives on publishers to invest in original and diverse content. When displaying articles to users, original content is not rewarded with a higher ranking and other publishers that simply reproduce the same content can appear higher in search results. Indeed, ad-funded publishers of reproduced content that invest heavily in SEO and accommodate the algorithms used by digital platforms (for instance by opting in to AMP) can feature higher in search results and newsfeeds than publishers of original content hosted behind a paywall.

We refer to the case study below by way of example.

Case study 8: *The Australian's* exclusive interview with James Packer

In October 2017, *The Australian* published an exclusive in-depth 5,000 word interview with James Packer.

This was Mr Packer's first interview in two years and *The Australian* flew a journalist and photographer to Argentina to conduct the interview. The finished story provided candid insights into Mr Packer's company debts, his settlement with his sister, and into his various personal relationships.

The Australian, which operates a paywall, published an online version of the article on 21 October 2017. The story was immediately picked up by other news outlets in Australia and around the world, in general with attribution, but with no new content provided by other content creators.

News Corp Australia's News.com.au websites, which publishes ad-funded 'free' content, featured a condensed version of the article on 22 October 2017.

The Australian, which offered one click free under Google's FCF policy at the time, came anywhere from second to sixth in search results depending on the query and the timing of the search.

By contrast, News.com.au featured as the first result for Google searches of 'James Packer'. News.com.au earned 60,973 page views to its version of the article, whereas the original article on *The Australian* earned 2,745 page views.

Similarly, where the digital platform selects the content it shows to users (e.g. Trending articles on Facebook, Apple News 'for you' feature and Google News), the digital platforms actively undermine provenance by promoting rewrites of publisher's original work and not rewarding provenance with a higher ranking position.

Case study 9: Newspoll 9 April 2018

On 9 April 2018, Newspoll (thirtieth loss by Coalition to Labor under Malcom Turnbull's leadership) was a trending topic on Facebook's search function. The search result cited *Guardian Australia's* coverage of Newspoll but within the topic itself, not a single link from *The Australian*, which owns Newspoll and breaks the result first every time the poll is published, was included.

The Australian had posted multiple items of content regarding Newspoll in the preceding hours on Facebook and had generated significant engagement from its 800,000 followers, yet Facebook's search prioritised results from almost every other publisher to the exclusion of *The Australian*.

The screenshot displays Facebook search results for the query 'tumbull newspoll loss'. On the left, a 'Trending' sidebar lists four topics: 'Newspoll' from theguardian.com, 'Syria' from thehill.com, 'Solo: A Star Wars Story' from cnet.com, and 'Viktor Orbán' from cnn.com. The main search results area shows a large article from theguardian.com titled 'Malcolm Turnbull insists Coalition is still behind him after 30th Newspoll loss'. Below this, an 'Also Reported By...' section lists several other articles from reuters.com and 2gb.com, all related to the 30th Newspoll loss and its political implications.

With reduced revenues from subscriptions and advertising, and reduced incentives to invest in original and diverse content, publishers of news and journalism are being increasingly corralled into creating content that benefits the digital platforms – rapid, undifferentiated, even copied, ad-funded content. The ultimate effect of these practices is felt by consumers, as described at Section 7 below.

- 3.10 **Do digital platforms have access to user data that is helpful to media content creators (e.g. readership statistics)? Does this access to user data create any information asymmetry between digital platforms and media content creators and, if so, how does this impact competition in the relevant markets?**
- 3.11 **If so, how much do media content creators value access to such user data? How does the access to or control over user data impact the relationship between digital platforms and media content creators? For instance, how transparent are digital platforms about how content reaches consumers via their algorithms and how much notice do media content creators receive when significant changes are made?**

Digital platforms have access to vast amounts of user data that publishers could use to understand and respond to reader interests and to better target online advertising. User data holds enormous value, including search term trends, readership demographics, readership statistics and traffic referral publishers. The data that digital platforms collect is superior to that of publishers, since they have the ability to merge data across the internet, whereas publishers receive fragmented information. Google collects third party data on 60 percent of all internet pages worldwide, while Facebook collects third party data on 27 percent of all internet pages worldwide. No other company individually tracks more than 12 percent of all pages.¹⁵⁶

Innovative media content creators have developed 'dynamic paywall technologies' which collect information from visitors to their websites (e.g. location, whether they are a previous subscriber, content that they have previously engaged with) to generate tailored subscription offers to match their characteristics. However, digital platforms undermine the incentive for media content creators to innovate by diverting consumers away from news content websites and keeping them within their ecosystems. This allows digital platforms to monopolise access to data and control how it is shared with publishers.

The access to data provided by digital platforms to publishers is severely limited, leading to significant asymmetry and a relationship of dependence. In particular:

- **Google Analytics** – Google provides media content creators the ability to track their own assets but this data is limited and importantly does not provide insights into the audiences of Google products such as Google Search.¹⁵⁷
- **Google referrals** – since Google moved to HTTPS, publishers can no longer see the referrer URL and therefore cannot see what search the user performed that brought them to an article page.
- **Google AMP** – AMP articles are automatically cached on Google servers, which gives Google access to the first-party data; Google shares data with publishers but limits collection to tools

¹⁵⁶ Ghostery Team, Tracking the Trackers, Ghostery, 4 December 2017 <<https://www.ghostery.com/lp/study/>>

¹⁵⁷ Google do offer insights on search term trends via Google Trends and via Google Adwords keyword planner. Google has discussed the possibility of working with publishers, including News Corp Australia, to create a subscriber propensity score for google users that combines Google's data (search history, topic interests etc.) with publisher data (devices used, content consumed) to create a model that predicts the likelihood of subscription. These discussions are still at an early stage, however would be a useful way to begin an information exchange between Google and content creators.

that work with AMP, impeding the ability of publishers to identify users over AMP and non-AMP pages;

- **Facebook Instant Articles** – Facebook shares limited data with publishers and does not pay any fees for hosting content on the platform;
- **Facebook Messenger bots** – Facebook does share some basic demographic information about Facebook Messenger bot users (location, gender) and analytics (content interacted with, length of tenure, recent activity, free-text fields added). Facebook Messenger bots allow Facebook to capture a range of behavioural data, location data and content preference data. All this data becomes available to Facebook and can be used to target that user with other Facebook products. Once this data has been tracked by the bot owner there is no way for this data capture to be disabled. Facebook captures this data indefinitely.
- **Apple News** – Apple provides publishers with a range of readership statistics, however, specific demographic information is aggregated.
- **Apple Safari** – Apple limits third-party trackers that usually partner with publishers.

Further, digital platforms are not transparent about how content reaches consumers via their algorithms. [Redacted]

Digital platforms also regularly change their algorithms, undermining content creators' ability to optimise content. Changes to algorithms have a direct influence on the referrals made from digital platforms to publishers' websites. [Redacted]

Content creators are given almost no notice of these changes. Historically, Facebook Australia has given News Corp Australia between 24 hours to one week's notice before changes are made. In other contexts, Facebook will give little to no notice of changes going live, and publishers are left to hear about changes as they are announced publicly or posted on the Facebook News Blog.¹⁵⁸ Google, Twitter, Instagram and Snapchat use similar notice periods, or otherwise publish announcements on a company blog.

Below are some examples where content creators were given little notice of changes going live:

- Facebook Engagement Bait;¹⁵⁹
- Facebook local news;¹⁶⁰
- Messenger Platform 2.3 Release on 26 February 2018, where a number of features were released on that day with various changes to the bot platform being made; and
- Google 'announced' an immediate roll-out of mobile first indexing on their Google Blog on 26 March 2018,¹⁶¹ which followed its announcement in late 2016 on the GoogleBlog that it would be experimenting with mobile first indexing.

¹⁵⁸ Facebook may make changes with consultation with publishers if they are working with them in a commercial arrangement, for example funding publishers to produce long-form content to trial on the platform, benefiting the publisher and Facebook.

¹⁵⁹ Facebook, Fighting Engagement Bait on Facebook, 18 December 2017 <<https://newsroom.fb.com/news/2017/12/news-feed-fyi-fighting-engagement-bait-on-facebook/>>

¹⁶⁰ Facebook, More Local News on Facebook, Globally, 26 March 2018 <<https://newsroom.fb.com/news/2018/03/news-feed-fyi-more-local-news-on-facebook-globally/>>

The argument is sometimes made that data is not a finite resource, so the dominance of a few large players like Google and Facebook does not prevent others, including publishers, from collecting or buying their own data. Economically, this is true; data is a non-rivalrous good in the sense that a particular platform using it does not of itself prevent other competitors using that same data.¹⁶² However, practically, access to and control over data tends to be in the hands of the dominant digital platforms and there are significant barriers preventing competitors from establishing a sufficient dataset to rival the dominant platforms.¹⁶³ The following factors undermine competitors' access to user data:

- **Network effects** – the more users that use digital platforms, the more likely other users will be drawn to the platform, which potentially represents a barrier for competitor services seeking to attract users and build a dataset;
- **Low tendency to multi-home** – although users can switch between platforms and give their personal data to other providers, there is a low incentive to switch, as platform services are usually 'free' and the evidence indicates a low tendency to multi-home; and
- **Scale of Google and Facebook** – the scale of Google and Facebook mean that any user data collected by competitors cannot compete with the quantity and quality of that collected by the two dominant platforms. Google and Facebook's ability to collect data extends far beyond their 'flagship' offerings of Google search and Facebook, with both companies acquiring user data from their complementary service offerings.

These factors make it virtually impossible for competitors to collect data at comparable volume or detail as the dominant platforms. [Redacted] We discuss this further below at Section 6.

3.12 How important are digital platforms in delivering audience (and revenue) to media content creators relative to total audience and revenue?

Digital platforms are having a serious impact on delivering audiences and thereby revenue to media content creators. This is particularly the case for mobile devices, where consumers are more likely to use a digital platform to access the news than visiting a publisher's website. [Redacted]

However, as noted above, the readers that flow from digital platforms tend to hold less value for publishers as they tend to be less engaged with the content and consume less pages. Accordingly, while these platforms are bringing in new audiences, the value when compared with direct traffic is lower.

[Redacted]¹⁶⁴

¹⁶¹ Google, Rolling out mobile-first indexing, 26 March 2018 <<https://webmasters.googleblog.com/2018/03/rolling-out-mobile-first-indexing.html>>

¹⁶² Competition Police International, Can big data protect a firm from competition?, 2017, pages 1-2 <<https://www.competitionpolicyinternational.com/wp-content/uploads/2017/01/CPI-Lambrech-Tucker.pdf>>

¹⁶³ Harry van Til, Nicolai van Gorp and Katelyn Price, Big Data and Competition, The Netherland Ministry of Economic Affairs, 13 June 2017, pages 11 and 20

¹⁶⁴ [redacted]

Section 6: Effects on advertising market

This section addresses the impact of digital platforms on the advertising market generally, which affects both advertisers and publishers (sellers of ad inventory). As a result of their dominance in the consumer-facing market, digital platforms have been able to extend their market power into the tied market for the supply of digital advertising services. Digital platforms increasingly control the entire supply chain between advertisers and publishers via their range of advertising technology (Ad Tech) services. This has led to excessive intermediation between advertisers and publishers and foreclosed competition between publishers and digital platforms. The overall effect of these practices has been a shift in advertising revenue away from publishers to digital platforms, with long term implications for publishers' ability to fund news and journalism. For advertisers, the shift to digital platforms has led to reduced choice, worse conditions and an increase in prices.

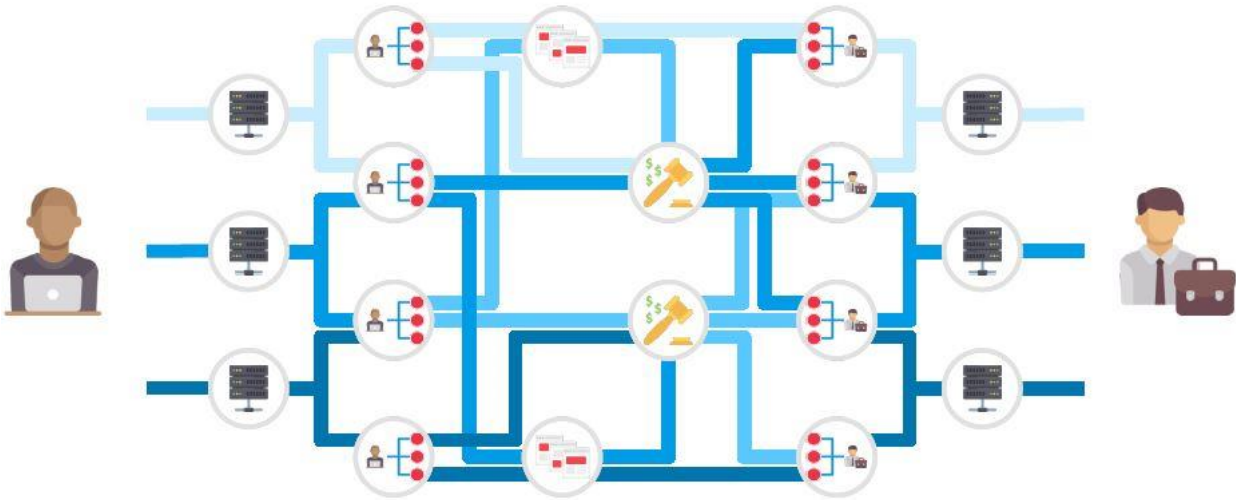
- 3.13 Describe the nature of the impacts (positive and negative) that digital platforms are having on advertisers? What causes these impacts? Are these impacts temporary or ongoing?
- 3.14 What are the advantages and disadvantages of using advertising services offered by digital platforms for advertisers (i.e. advertising agencies and businesses directly advertising on digital platforms)?
- 3.15 What terms and conditions do digital platforms offer advertisers? How do they differ from those offered by other suppliers of advertising services? Have digital platforms changed the price, quality or choice for advertisers? If so, what are the implications of this for advertisers?
- 3.16 Do digital platforms have access to user data that is helpful to advertisers (e.g. return on investment statistics)? Does this access to user data create any information asymmetry between digital platforms and advertisers and, if so, how does this impact competition in the relevant markets?
- 3.17 How much do advertisers value digital platforms' access to user data? How does the access to or control over user data impact the relationship between digital platforms and advertisers?

1 The impact of digital platforms on publishers

While digital platforms could provide benefits to publishers in the form of increased data about readers and the ability to offer targeted advertising on their websites, in reality digital platforms are engaging in various practices to entrench their role as intermediators between advertisers and publishers and to foreclose competition from publishers.

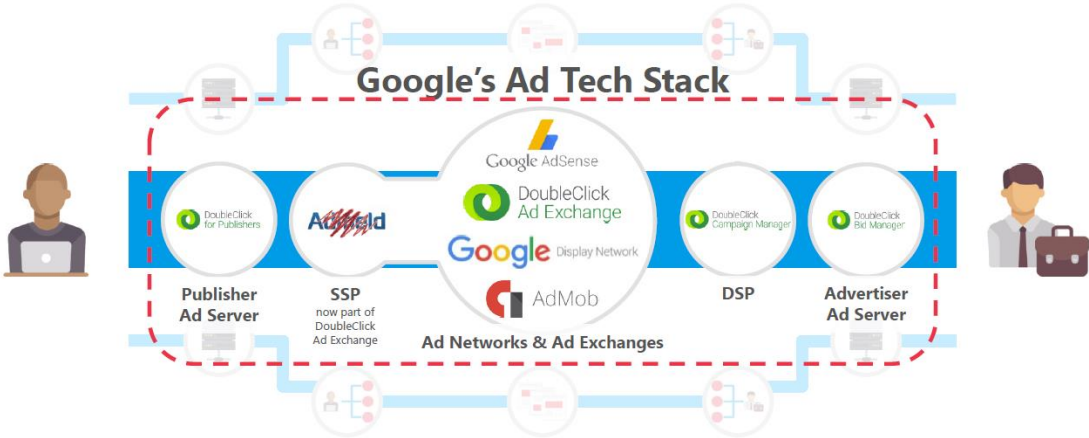
In a competitive environment, the Ad-Tech pipeline would be multilayered (as depicted in Figure 37). Publishers on the supply side and advertisers on the demand side would both be able to choose from various Ad Tech services at each point of the pipeline to find the optimal Ad Tech mix for their needs.

Figure 37: Competition Ad-Tech pipeline



The reality is that Google and Facebook dominate the Ad-Tech pipeline and are increasingly operating within a walled garden. In particular, through both acquisition and organic growth, Google now controls the dominant technologies at every point in the supply chain (see Figure 38 below), allowing it to control the entire trading process. Facebook is developing its Ad-Tech capabilities and dominates advertising technology in the social media advertising space.

Figure 38: Google's Ad Tech Stack



Google and Facebook have become an essential service for advertisers seeking digital advertising opportunities, which has had flow on effects on publishers. As advertisers increasingly purchase ad space through Google and Facebook, publishers on the supply side are left with little choice but to sell inventory through the platforms' ad networks and exchanges. While publishers can choose to bypass the digital platforms and sell advertising inventory directly, they are constrained by advertiser demand to buy from them. With advertisers increasingly turning to Google and Facebook, publishers face significant pressure to sell via Google and Facebook and relinquish a cut of their advertising revenue to the dominant platforms as a result. In particular:

- Publishers using AdSense receive just 68 percent of the advertising revenue;¹⁶⁵
- Publishers using AdX receive between 80 to 90 percent of the advertising revenue;¹⁶⁶ and
- Facebook does not disclose the revenue share publishers receive from Audience Network, but it is usually around 70 percent.¹⁶⁷

1.1 Tying and bundling

Digital platforms require, or strongly encourage, advertisers and publishers to use their entire range of Ad Tech products. In particular, Google has designed their 'stack' of Ad Tech products to seamlessly integrate, making it difficult or impossible to use the individual services within the 'stack' with competitor products. The effect of this strategy is that as soon as publishers or advertisers use one Google Ad Tech product, they have a strong incentive to use Google Ad Tech products exclusively. This undermines potential competition from publishers and increases barriers to entry. For example:

- If a publisher uses DFP, then AdSense or AdX provides a streamlined sales process for ad inventory across all channels. It also easily links to Google Analytics, allowing publishers to track and record user behaviour, and optimise future advertising inventory based on this data;
- If a publisher decides to publish their articles in AMP format, then the easiest way to monetise the articles is to use Google's AdX. Google has recently made header bidding available on AMP which will make it slightly easier for a publisher to monetise inventory through non-Google exchange sources, though using AdX is still much simpler; and
- If an advertiser wishes to purchase advertising inventory on YouTube programmatically, they must use Google's DoubleClick Bid Manager service. Competitor programmatic bidding tools will not work. Since YouTube is the dominant video platform, advertisers wishing to advertise through this medium are essentially forced to use Google's products.

As advertisers continue to use the dominant platforms, the relationship between them becomes more embedded. This increases the propensity of advertisers to remain in the platform 'stack' and makes it more challenging for them to opt out. In turn, publishers become increasingly reliant on the platforms' advertising technology and targeted analytics. The net effect is a closed market between 'platform aligned suppliers' and 'platform aligned buyers', where publishers and advertisers find themselves in an unavoidable partnership with Google and Facebook, to their own detriment.

1.2 Exploitation of information asymmetries between publishers and platforms

While digital platforms give advertisers access to data for the purposes of creating targeted advertising campaigns, they withhold data from publishers. This leaves publishers at a competitive disadvantage and dependent on the platform for advertising sales. It also undermines potential disintermediation as a strategy to constrain the digital platforms, since publishers are left 'in the dark' with no way of knowing if there is a business case to sell directly. For instance:

¹⁶⁵ Google, AdSense Help: AdSense revenue share, 2018 <<https://support.google.com/adsense/answer/180195?hl=en>>

¹⁶⁶ Brian Blondy, AdX vs. AdSense – Which one is right for you?, Total Media Solutions, 30 March 2017 <<https://www.totalmediasolutions.com/blog/adx-vs-adsense/>>

¹⁶⁷ Riddhi Mukherjee, Facebook's Audience Network gearing to take on Google AdSense, Medianama, 27 May 2016 <<https://www.medianama.com/2016/05/223-facebooks-audience-network-gearing-to-take-on-google-adsense/>>

- Google provides advertisers who utilise their advertising services with rich consumer data (Google Audience Data), however, the same is not offered to publishers. When queried why this data is not made available to publishers, Google tends to cite 'privacy concerns'. However, a recent Google initiative launched late 2017 permits publishers to access Google's data on user's aggregated search history – for a fee.¹⁶⁸
- Facebook's in-stream video advertising pricing model offers publishers a fixed fee and fixed fill rate, seemingly guaranteeing revenue to the publisher. This seems at first like a relatively risk-free approach, but experience has shown that prices quoted to publishers are below market rates. This suggests to publishers that Facebook is collecting an unknown margin on top of the gross price paid by the advertiser, but Facebook does not disclose the effective revenue share between them and the publisher.
- Facebook Audience Network for Instant Articles does not publicly disclose the share of advertising revenue that goes to publishers. This leaves publishers in the dark, with no way to know if they are getting a 'fair' deal.

1.3 Foreclosure of competition from publishers

Publishers also face a number of handicaps when compared with Google and Facebook which prevents them from viably competing to supply advertising services.

- **Data fragmentation** – Building a complete picture of consumer behaviour is essential to provide targeted advertising, however, this requires consistent collection of user data. As consumers increasingly access news and journalism across multiple channels and devices, the data that publishers have access to becomes fragmented.

Google and Facebook are perpetuating this fragmentation through policies such as Instant Articles and AMP. In particular, Google's AMP and Facebook's Instant Articles place restrictions on third party cookies. As a result, it is difficult for publishers and other competitors to track users across different domains when these formats are used. For example, News Corp Australia cannot track users across *The Daily Telegraph* and *The Australian* if articles are accessed via AMP or Instant Articles, since a cookie from one title would be considered as third party data by the other title.

Case Study 10: Matching cookies across distribution channels

If a user accesses news on their iPhone, through the Safari mobile browser, Safari will give the user the option to consent to cookies only for sites they have visited. If the user visits News.com.au and *The Daily Telegraph*, cookies allow these visits to be matched, so the same user can be tracked across both distribution channels.

However, if the user accesses an AMP article from *The Australian*, since this AMP page is actually hosted on Google's own cache, the user's consent to cookies in Safari does not extend to this page. As such, News Corp Australia loses visibility of the consumer's third interaction, fragmenting their data collection capabilities.

¹⁶⁸ George Slefo, Google to Share Visitors' Aggregated Search History with Publishers, AdAge, 3 October 2017 <<http://adage.com/article/digital/google-share/310732/>>

As discussed in detail at Section 4, AMP now allows for 'first party tracking' of unique users. This means, for example, that if a consumer reads an article on *The Daily Telegraph* in AMP format and then reads an article on *The Daily Telegraph* in non-AMP format, that behaviour can be tracked. However, this is only possible if publishers use Google Analytics and Google retains the user data as well. Publishers are, however, still unable to track ads across AMP and non-AMP formats. While Google has not publicly given an explanation for why this is the case, the technology required for the tracking of users and ads is very similar, making it doubtful that the reason is technical feasibility. A more likely explanation is that it advances Google's advertising business. Only Google has the ability to track ads across AMP and publishers' inability to track ads across different channels reduces the relative attractiveness of their direct advertising sales.

- **Cookies** – A cookie is a small piece of data sent from a website and stored on the user's computer by the user's web browser while the user is browsing. Cookies facilitate the tracking of users across their internet based on their browser history. There are broader fragmentation problems associated with cookies, however, the omnipresence of the dominant digital platforms insulates them from these issues and disproportionately affects publishers.

- **Multiple devices** – Cookies cannot accurately track users across devices, or even across different browsers. This is becoming a bigger problem as people increasingly access content across multiple devices: for example, one person may access news content via a desktop computer at work, a laptop computer at home, and a mobile phone on their way to work. This makes it difficult to know if interactions across devices are from different people using different devices, or the same person using multiple devices. Furthermore, consumers spend the majority of mobile time using apps, which do not support the use of cookies at all.

Although the platforms face the same issues when it comes to cookies across multiple devices, they have much less need to rely on them for a comprehensive dataset. Facebook requires users to 'sign-in' with identifying information, as does Google's services like Gmail, Google Play and to some extent YouTube. This allows Facebook and Google to track individuals using multiple devices.

- **Apple's anti-cookie initiative** – Apple has announced that the next version of their browser, Safari, will include 'Intelligent Tracking Prevention' (ITP). This initiative is designed to block third-party trackers from capturing cross-site browsing data for the purpose of targeted advertising. It has been announced that this will work by clearing cookies after a 24 hour window has elapsed.

Reliance on the one day window means that this initiative will harm Google and Facebook far less than all other publishers and Ad Tech competitors. Since users tend to visit Google and Facebook on a daily basis, the 24 hour clearance window would not prevent them consistently tracking users. Furthermore, the majority of Facebook's traffic is through the app, which is not tracked by cookies anyway. Thus, rather than levelling the playing field, this initiative simply gives an even bigger competitive advantage to the dominant duo.

The changes made to Apple's Intelligent Privacy Tracking in the release of iOS 11.2 in December 2017 had a significant impact on News Corp Australia's subscription business across a number of functions:

- **Churn:** The deletion of cookies every 24 hours causing paying subscribers to have to repeatedly login ultimately leads to a higher level of churn as customers cancelled their subscriptions through frustration.
 - **Customer service:** News Corp Australia was required to expend additional resources to respond to the number of customer complaints regarding repeated logins and additional internal resources were diverted from critical projects to resolving the issues caused by ITP.
 - **Customer experience:** Paying subscribers were subjected to a poor customer experience during a period of increased mobile activity (summer/Christmas break) leading to a negative view of News Corp Australia's subscription offering.
 - **Lost revenue:** In order to stem the size of the problem, News Corp Australia removed the paywall for users on iOS 11.2 and later while the issue was resolved resulting in revenue loss from potential subscribers on those devices during that period.
- **Demand for people-based marketing** – Increasingly, advertisers are seeking out ways to connect with real people in their advertising campaigns. This is referred to as 'people-based marketing'. While cookies are anonymous and provide tracking by mapping an individual to their devices, people-based marketing works the other way around by mapping devices back to the individual.¹⁶⁹

Facebook and Google's access to people-based data is unparalleled, and the shift away from cookies to people-based marketing only entrenches their dominance as ad networks and makes it more difficult for others to compete. For instance, identifying information like an email address is crucial for people-based marketing, but a very low percentage of users 'log in' to publishers' content directly. Although subscriptions would allow publishers to require sign-ins, as discussed at Section 4 above, the dominant digital platforms have undertaken various strategies to undermine subscription models. In contrast, users often remain logged in to Facebook and Google at all times. In addition, Facebook and Google increasingly provide identity verification services on a large number of third-party sites, with many people simply using their Google or Facebook login.

- **Long term user engagement** – Advertisers increasingly expect longitudinal data on user behaviour, which allows for a detailed picture of the user but requires frequent user engagement. Collecting longitudinal data is much more difficult for publishers than it is for platforms like Facebook and Google, since (as mentioned above) their services are used virtually daily by users, who remain logged in almost all the time.

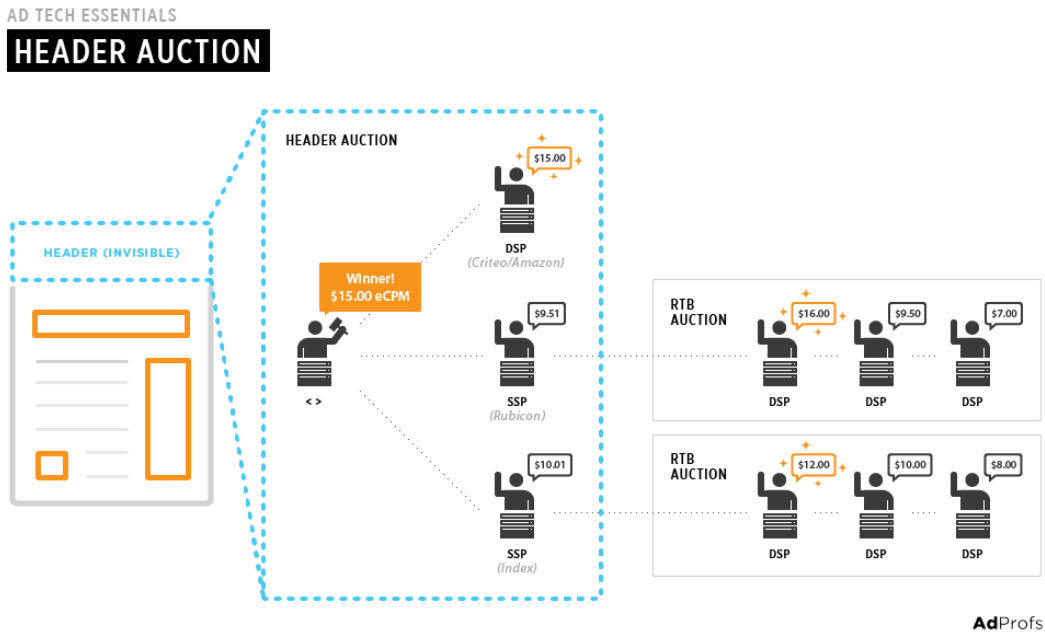
¹⁶⁹ Seth Garske, People-Based Marketing: Targeting People, Not Cookies, Target Marketing, 18 July 2017 <<http://www.targetmarketingmag.com/post/people-based-marketing-targeting-people-not-cookies/>>

The competitive advantages that Google and Facebook enjoy over other competitors are underscored by News Corp Australia's attempts to establish a rival ad exchange. In 2015, we launched NewsConnect, an ad exchange designed to compete with Google. In December 2017, News Corp US followed suit with an ad exchange for US markets, NewsIQ. Similar to Google's services, NewsConnect and NewsIQ both leverage a range of consumer data, including purchase transaction data, to deliver targeted advertisements. The Computer & Communications Industry Association, a lobby group aligned with Google, has acknowledged News Corp as a competitor ad network.¹⁷⁰ [Redacted]

1.4 Foreclosure of emerging bidding process

Google has also taken steps to stave off emerging competition by publishers from so-called header bidding. Header bidding is an additional auction that takes place outside of a publisher's ad server and allows publishers a way to simultaneously offer ad space to numerous SSPs or ad exchanges at once (rather than sequentially). Header bidding is different from RTB auctions because instead of each ad exchange having their own auction, one at a time, at a much lower priority in the publisher's ad server, header bidding allows all the ad exchanges to bid at the same time at the highest priority in the ad server.

Figure 39: Header bidding



Source: Marketingland

Before header bidding, a publisher would specify in a publisher ad server (such as DFP) multiple SSPs (like Google's AdX) that they would be willing to sell their ad space to. The rival SSPs were unable to bid on specific pieces of ad space and were instead limited to bidding for a block on a CPM basis. This

¹⁷⁰ Springboard, Statement: New Publisher Carter Will Hurt Consumers, 7 March 2018, <<https://springboardccia.com/2018/03/07/statement-new-publisher-cartel-will-hurt-consumers/>>

worked to the disadvantage of publishers as they could not optimise premium ad spaces for which SSPs may have been willing to pay a higher price.

In a header bidding scenario, when a user accesses a publisher's page, the publisher invites multiple ad exchanges and/or SSPs to bid on the right to place ads. Information about the particular user is contained in the user's cookies. Utilising this information, the ad exchanges run their own auctions and the winning ad exchange places the winning bid's ad on the page. This process increases the effective number of bidders, and in doing so increases the price publishers can receive for their advertising. For publishers, header bidding can result in yields up to 50 percent more than a non-header bidding scenario.¹⁷¹

In 2017, Google launched an alternate bidding product called 'exchange bidding', designed to replace header bidding. Like almost all Google's Ad Tech products, it uses a revenue sharing arrangement, which is ultimately a much higher price than header bidding products, which are usually free, or cost a very small flat fee.¹⁷² Despite Google's hopes that exchange bidding would eliminate header bidding, this has not yet occurred, with publishers so far tending to use both products for different purposes.¹⁷³ Furthermore, the 5 percent revenue share that advertisers must sacrifice has proven to be a tough sell.¹⁷⁴

Despite the advantages of header bidding over exchange bidding, Google has used its market power in other markets to undermine header bidding. For instance, within Google's AMP environment, advertisers initially had no choice but to use Google's exchange bidding product, as header bidding was not enabled at the time of AMP's launch in February 2016.¹⁷⁵ We refer to the case study below.

Case study 11: Google exchange bidding

With the introduction of AMP, Google argued that because AMP pages are pre-loaded (which is what enables them to load instantly on the user's device) it was not possible for the user's browser to undertake the header bidding process. Google argued this is due to privacy concerns, since triggering a header bid auction on a pre-loaded page would give ad tech providers and publishers access to information about users who never visited their pages (since the user remains within the Google cache).

For this reason, Google argued that the bid process must begin server-side, which is how their exchange bidding process (Exchange Bidding Dynamic Allocation, 'EBDA') works. EBDA is only available through DFP, Google's dominant publisher ad server, forcing publishers to use of this related Google Ad Tech product.

¹⁷¹ Ricardo Bilton, With header bidding, publishers are boosting CPMs by as much as 50 percent, Digiday, 12 November 2015, <<https://digiday.com/media/header-bidding-publishers-boosting-cpms-much-50-percent/>>

¹⁷² Sarah Sluis, Google's Header Bidding Killer Won't Kill Header Bidding, Publishers Say, Ad Exchanger, 8 June 2017, <<https://adexchanger.com/ad-exchange-news/googles-header-bidding-killer-wont-kill-header-bidding-publishers-say/>>

¹⁷³ Sarah Sluis, Google's Header Bidding Killer Won't Kill Header Bidding, Publishers Say, Ad Exchanger, 8 June 2017, <<https://adexchanger.com/ad-exchange-news/googles-header-bidding-killer-wont-kill-header-bidding-publishers-say/>>

¹⁷⁴ George Slefo, Google's Answer to Header Bidding Runs into Headwinds, AdAge, 13 July 2017, <<http://adage.com/article/digital/google-s-header-bidding-alternative-ditched/309707/>>

¹⁷⁵ Sarah Sluis, Header Bidding Comes to Platform Publishing, as Rubicon Ties Up with Google AMP, Ad Exchanger, 28 March 2016, <<https://adexchanger.com/platforms/header-bidding-comes-platform-publishing-rubicon-ties-google-amp/>>

Since Google hosts EBDA, it has informational advantages over other SSPs and ad exchanges, particularly since it can observe the bidding from all other exchanges but not vice versa.

Within a few months of AMP's launch, some publishers began to experiment with header bidding solutions that were compliant with AMP's advertising requirements.¹⁷⁶ Subsequently, publishers found it was technically possible to use header bidding within AMP, but the process to do so was complicated to configure, required significant additional work, tedious to implement and did not always operate effectively in practice.¹⁷⁷ As such, header bidding was often not a feasible or desirable option in practice.

Following significant pressure from publishers, in February 2018 Google announced AMP support for 'Real-Time Config' (RTC), a component which enables first class support for third-party header bidding servers like Prebid.¹⁷⁸ While this is a welcome but far from perfect change from publishers' perspective,¹⁷⁹ the fact that it took immense pressure from publishers over a two year period to bring about the change highlights the power that Google wields over both the AMP format and their Ad Tech stack more broadly.

As with the cessation of FCF discussed at Section 4 above, Google's response to the emergence of header bidding was first to stifle competition through imposing restrictions on publishers and then, belatedly and under intense pressure, to amend their policy and allow competition, but only after their market power was restored.

2 The impact of digital platforms on advertisers

Digital platforms provide some benefits to advertisers. Digital platforms hold extremely valuable data on users, including as to demographics, location, interests and behaviours that facilitates targeted advertising. Digital platforms can also offer advertisers advanced campaign analytics, which allows them to carefully manage engagement with advertising campaigns, as well as gain important insights into the profile of their audience (including personal characteristics and when and where users are most likely to interact with their advertisements). Advertisers can use these insights to guide future advertising strategies.

However, these positive impacts come at a cost and in the long term will be outweighed by the significant competitive detriments.

¹⁷⁶ Sarah Sluis, Header Bidding Comes to Platform Publishing, as Rubicon Ties Up with Google AMP, Ad Exchanger, 28 March 2016, <<https://adexchanger.com/platforms/header-bidding-comes-platform-publishing-rubicon-ties-google-amp/>>

¹⁷⁷ Kean Graham, A Publisher's Guide to Google Accelerated Mobile Pages (AMP) and Header Bidding, MonetizeMore, 17 November 2017, <<https://www.monetizemore.com/blog/publishers-amp-header-bidding/>>

¹⁷⁸ AMPhtml, Ads and AMP: Year in Review and Looking Ahead, AMP Accelerated Mobile Pages Project, 14 February 2018, <<https://amphtml.wordpress.com/author/pbakaus/>>; The AMP Channel, Effective AMP Monetization: Header Bidding & More! – AMP Conf 2018, YouTube, 12 April 2018, <<https://www.youtube.com/watch?v=mvAmvKiWpFA>>

¹⁷⁹ Google allows server-side header bidding (whereby the header bidding code is executed on a server), but not client-side header bidding (where the code is executed by the browser). Server-side header bidding is inadequate because it does not let competing ad networks and exchanges access the same level of information about the instances that come up for bid that Google is able to access. The result is still an uneven playing field, on which Google's AdX is able to access more complete information about inventory. Competitors, on the other hand, have a heavily obscured view of the inventory.

2.1 Barriers to switching

Google has come under scrutiny from regulators in the US and the EU for imposing restrictions on advertisers switching to alternative advertising platforms. Clearly, any restriction on advertisers switching also affects publishers seeking to attract direct advertising sales.

In a settlement with the US Federal Trade Commission (FTC) in January 2013, Google agreed to remove contractual restrictions on the transferability of AdWords' advertising campaign to rival search advertising platforms.¹⁸⁰ Later that year, Google proposed similar commitments to the European Commission.¹⁸¹ In December 2017, Google announced that it would extend its commitments made to the FTC regarding migration of AdWords campaigns.¹⁸²

Bing Ads has a function that allows for the transfer of Google AdWords campaigns to run the same ads on Bing. However, there is very little evidence of users migrating from Google AdWords to Bing Ads. Rather than seeing migration from one platform to another, given the dominance of Google in search, we believe it is more likely that advertisers will simply expand their reach across multiple platforms, including Google.

2.2 Higher prices

The market power held by Google and Facebook in relation to advertising effectively gives them the ability to set market prices. Over the past two years, the cost of digital advertisements has risen by 12 percent, an increase of 70 percent more than the increased cost of television advertisements over the same period.¹⁸³

While the lack of digital platforms' transparency makes ascertaining the true magnitude of price increases difficult, Facebook cited a 43 percent increase in average price per ad in their 2017 fourth quarter result, confirming a strong upward trend.¹⁸⁴ As the price of digital advertising has increased, advertisers have increased their spending, indicating a lack of constraint on Google and Facebook. This trend is particularly acute in Australia, where digital advertising spend increased by 11.7 percent in 2017.¹⁸⁵ With the highest digital ad spend per user in the world, Australia is expected to surpass 50

¹⁸⁰ US Federal Trade Commission, Google Agrees to Change Its Business Practices to Resolve FTC Competition Concerns In the Markets for Devices Like Smart Phones, Games and Tablets, and in Online Search, 3 January 2013, <<https://www.ftc.gov/news-events/press-releases/2013/01/google-agrees-change-its-business-practices-resolve-ftc>>

¹⁸¹ European Commission, Antitrust: Commission seeks feedback on commitments offered by Google to address competition concerns, 25 April 2013, <http://europa.eu/rapid/press-release_IP-13-371_en.htm>

¹⁸² David McLaughlin, Google Extends Commitments Stemming From U.S. Antitrust Case, 27 December 2017, <<https://www.bloomberg.com/news/articles/2017-12-26/google-agrees-to-extend-commitments-made-in-u-s-antitrust-probe>>

¹⁸³ Mark Fahey, Digital ads: More expensive but reaching fewer consumers, CNBC, 21 March 2017, <<https://www.cnbc.com/2017/03/20/digital-ads-more-expensive-but-reaching-fewer-consumers.html>>

¹⁸⁴ Max Cherney, Facebook earnings send stock to record after massive ad price increase, Market Watch, 1 February 2018, <<https://www.marketwatch.com/story/facebook-earnings-stock-touches-record-after-massive-ad-price-increase-2018-01-31>>

¹⁸⁵ iab. Australia, Online advertising spend reaches \$7.6 billion in 2017 financial year, 5 September 2017, <<https://www.iabastralia.com.au/news-and-updates/iab-press-releases/item/22-iab-press-releases/2374-online-advertising-spend-reaches-7-6-billion-in-2017-financial-year>>

percent in 2018.¹⁸⁶ This is well ahead of the global average which is expected to rise to 40 percent in 2018.¹⁸⁷

Further, as a result of Facebook's algorithm change, advertisers on Facebook are now paying a higher price for lower returns. The refocus on 'family and friends' means that users now see less advertisements in their newsfeed. This has directly led to a decline in the audience reach of advertising campaigns, and less users clicking through to their content.¹⁸⁸ Meanwhile, in News Corp Australia's experience the price of Facebook ads has continued to increase.

2.3 Lack of control over terms and conditions

The dominance of Google and Facebook allows them to control the content and format of advertisements published on their platforms. Advertisers using digital platforms to place advertisements also lack control over where and when their ads will appear on a third party website or platform. As a result, advertisers may find their content placed in contexts which are inconsistent with their brand or message, such as gambling or political websites.

The terms and conditions relating to advertisements heavily restrict the choice and control over ad creation and placement. As unavoidable trading partners, advertisers have little choice but to engage with the platforms and are effectively forced to comply with whatever terms and conditions the platforms impose. For example:

- AdWords video campaigns which are non-skippable cannot exceed 15 seconds and must satisfy criteria relating to their dimensions, quality and content nature;¹⁸⁹
- Video auto play with sound that are non-skippable will have ad-blocking restrictions applied in Google's Chrome browser, however these will not apply to video heavy sites like Google's YouTube platform, as video ads of the type they serve have yet to be tested so are exempt (pre-roll and mid-roll within video content);¹⁹⁰
- AdSense ads can only appear in certain locations on a webpage and must satisfy content restrictions;¹⁹¹
- AMP advertisements must satisfy size and simplicity requirements to facilitate quick page loading;¹⁹² and

¹⁸⁶ Signal, Australian advertisers ramp up digital ad spending but struggle to engage consumers, <<https://www.signal.co/resources/australian-digital-ad-spend-trends/>>

¹⁸⁷ Rochelle Burbury, Internet to Account for Over 60% of Total Ad Spend in Australia by 2020: Zenith, <<http://www.bandt.com.au/advertising/internet-account-60-total-ad-spend-australia-2020-zenith>>

¹⁸⁸ Kurt Wagner and Rani Molla, Facebook ad costs spiked higher after a big change to its News Feed algorithm, recode, 7 March 2018 , <<https://www.recode.net/2018/3/7/17087468/facebook-ad-prices-increase-algorithm-news-feed>>

¹⁸⁹ Google, Advertising policies help, Video ad requirements, 2018, <<https://support.google.com/adwordspolicy/answer/2679940?hl=en-AU>>

¹⁹⁰ Rhett Jones, Why you should be worried about Chrome blocking autoplay videos with sound, Kotaku, 20 September 2017, <<https://www.kotaku.com.au/2017/09/why-you-should-be-worried-about-chrome-blocking-autoplay-videos-with-sound/>>

¹⁹¹ Google, AdSense help, Ad placement policies, 2018, <<https://support.google.com/adsense/answer/1346295?hl=en>>

¹⁹² Google, DoubleClick for Publishers help, Available AMP pages and AMPHTML features in DFP, 2018, <https://support.google.com/dfp_premium/answer/7177589>

- The quantity of ads that can appear in an Instant Article is restricted based on the length of the article, being limited to one ad for every 350 words, or no more than 15 percent of the article.¹⁹³

These are just some of the many limitations that ads face on digital platforms. Where these conditions are not satisfied, the platforms reserve far-reaching rights to block or remove the ad, and even the content it appears alongside. This negatively impacts advertisers who may find their ad no longer viewable and getting clicks, which means they must invest time and money ensuring that their ads comply with the ever-changing and extensive list of restrictions imposed by the digital platforms. For instance:

- Google's AdSense policy states "in the event that we ever disable ads to either your site or to your account, the only way to get your ads re-enabled is to carefully read the notification email and to be responsive to our requests"¹⁹⁴ and
- Facebook's policy on Instant Articles asserts that where an article contains ads which provide an 'unexpected, disruptive or misleading' experience, they reserve the right to reduce an article's distribution in the newsfeed, or prohibit the publisher's use of Instant Articles altogether.¹⁹⁵

2.4 Exploitation of information asymmetries

The sheer scale of the data held by digital platforms has given rise to significant information asymmetry between advertisers and the platforms, creating a relationship of dependency. This asymmetry has also meant that advertisers are unable to verify the quality of the data provided to them by the platforms. With no third-party verification constraints imposed on the platforms, advertisers have no choice but take the data provided to them at face value.

Indeed, there have been numerous incidents in recent years that suggest the reporting and measurement data provided by the platforms is not reliable, including:

- In November 2017, Facebook was forced to refund a number of advertisers after disclosing they had been charged for video ads shown out of view of users on Instant Articles, and others which continued to play when users had scrolled past them in the newsfeed;¹⁹⁶
- In September 2017, it was revealed that Facebook's reach estimate for advertisements in the US was 25 million young Americans higher than the US Census reported as existing. Facebook's Ad Manager tool claimed advertisers could reach 41 million 18 to 24 year olds in the US, and 60 million 25 to 34 year olds, but the latest census count revealed just 31 million 18 to 24 year olds, and 45 million 25 to 34 year olds;¹⁹⁷

¹⁹³ Facebook for Developers, Ad placement in Instant Articles, Manual placement, 2018, <<https://developers.facebook.com/docs/instant-articles/monetization/ad-placement#manual-placement>>

¹⁹⁴ Google, AdSense help, AdSense policies: a beginner's guide, 2018, <<https://support.google.com/adsense/answer/23921?hl=en>>

¹⁹⁵ Facebook for Developers, Instant Articles Policies, E Things you should know, 2018, <<https://developers.facebook.com/docs/instant-articles/policy/>>

¹⁹⁶ Tim Peterson, Facebook refunds advertisers for mobile video ads played out of view, Marketing Land, 6 November 2017, <<https://marketingland.com/facebook-refunds-advertisers-mobile-video-ads-played-view-227834>>

¹⁹⁷ Jessica Guynn, How much reach do Facebook and Twitter have? Data may not be as accurate as you think, USA Today, 26 October 2017, <<https://www.usatoday.com/story/tech/news/2017/10/26/facebook-twitter-reach-users/803932001/>>

- In August 2017, it was revealed that Facebook's reach estimate for advertisements in Australia was 1.7 million more 15 to 40 year olds than the official national population in this demographic;¹⁹⁸
- In December 2016, Facebook admitted to discrepancies between 'likes' and 'shares' reported on its desktop interface and its mobile app;¹⁹⁹
- In November 2016, Facebook revealed that their 'referrals' metric (a measure of how many times users clicked on a Facebook post to open that business's mobile app or visit their website) was incorrectly counting clicks on Facebook-native photos and videos which simply enlarged the photo or video. Facebook disclosed that almost one third of referral clicks were incorrectly counted this way, indicating over inflation of more than 40 percent;²⁰⁰
- In November 2016, Facebook announced that the average time spent per Instant Article had been consistently over reported since August 2015. This resulted in an average time metric 7 to 8 percent higher than it should have been;
- In November 2016, Facebook announced that the 'organic reach' of a post (the number of people who saw at least one post by a page over a 7 or 28 day period) was including multiple views in that period by one person as multiple people. It was estimated that these 'duplicate' views accounted for 33 percent of 7 day organic reach counts and 55 percent of 28 day organic reach counts;²⁰¹
- In November 2016, it was also revealed that organic reach figures were further inflated by the fact that Facebook included views which did not actually appear on the users screen, resulting in roughly 20 percent over inflation.²⁰² Correction to this metric only came into force in February 2018, with Facebook citing technical difficulties as the reason for the delay;²⁰³ and
- In August 2016, Facebook disclosed that its metric for the average time users spend watching videos was artificially inflated, since it only counted views of more than 3 seconds. This inflation was significant: research by P&G found that the average view time for a mobile ad in the Facebook newsfeed was actually 1.7 seconds, and Facebook itself estimated the inflation at 60 to 80 percent. This overestimation had been going on for more than two years.²⁰⁴

¹⁹⁸ Arvind Hickman, Facebook says platform can reach 1.7m more young adult users than Aussie population, AdNews, 30 August 2017, <<http://www.adnews.com.au/news/facebook-says-platform-can-reach-1-7m-more-young-adult-users-than-aussie-population>>

¹⁹⁹ Tim Peterson, Facebook discloses new measurement errors, continues to hone its maths, Marketing Land, 9 December 2016, <<https://marketingland.com/facebook-discloses-new-measurement-errors-continues-hone-math-200416>>

²⁰⁰ Ginny Marvin, In major measurement update, Facebook overhauls metrics, makes corrections, adds viewability, Marketing Land, 16 November 2016, <<https://marketingland.com/facebook-measurement-update-metrics-viewability-verification-198304>>

²⁰¹ Ginny Marvin, In major measurement update, Facebook overhauls metrics, makes corrections, adds viewability, Marketing Land, 16 November 2016, <<https://marketingland.com/facebook-measurement-update-metrics-viewability-verification-198304>>

²⁰² Tim Peterson, Facebook discloses new measurement errors, continues to hone its maths, Marketing Land, 9 December 2016, , <<https://marketingland.com/facebook-discloses-new-measurement-errors-continues-hone-math-200416>>

²⁰³ Jon Loomer, Your Facebook Page Organic Reach is Dropping (But Not Really), 9 February 2018,, <<https://www.jonloomer.com/2018/02/09/facebook-page-organic-reach-dropping-not-really/>>

²⁰⁴ Suzanne Vranica, Facebook and Google Face Emboldened Antagonists: Big Advertisers, The Wall Street Journal, 25 March 2018, <<https://www.wsj.com/articles/facebook-and-google-face-emboldened-antagonists-big-advertisers-1521998394>>

When these issues come to light, Facebook has generally addressed them by correcting their metrics accordingly, and, where relevant, assuring advertisers that the miscalculations have not had an impact on the cost of their ad inventory. Regardless, these metrics undoubtedly inform the buy and sell strategies of advertisers, publishers and other content creators. Furthermore, while rectifying calculation errors is a welcome response, the quantity and frequency of such disclosures has irreversibly damaged advertisers' trust in Facebook's measurements.

Efforts by the platforms to increase transparency of reporting have often been inadequate, with 'privacy' regularly cited as justification for continued secrecy. This is despite the platforms' willingness to offer user data to advertisers for targeting purposes. For example, in response to pressure to increase the transparency of reporting data, Facebook has publicly laid out a plan to make measurement data available to third parties for the purpose of verification, and undergo an internal audit of measurement processes.²⁰⁵ However, Facebook has been careful to caveat this plan with allegations that privacy concerns limit the amount of information they can provide to third parties.²⁰⁶

There have been some positive developments, although these have generally been slow and insignificant. In the US, Google and Facebook have progressively been submitting to auditing processes under the Media Rating Council, a move welcomed by advertisers. Google's DFP and AdWords is accredited by the MRC, and YouTube is currently under review.²⁰⁷ Facebook only agreed to MRC audit in early 2017; this process is still ongoing, and it is unclear whether it will lead to actual accreditation.²⁰⁸

²⁰⁵ Suzanne Vranica, Facebook and Google Face Emboldened Antagonists: Big Advertisers, The Wall Street Journal, 25 March 2018, <<https://www.wsj.com/articles/facebook-and-google-face-emboldened-antagonists-big-advertisers-1521998394>>

²⁰⁶ Suzanne Vranica, Facebook and Google Face Emboldened Antagonists: Big Advertisers, The Wall Street Journal, 25 March 2018, <<https://www.wsj.com/articles/facebook-and-google-face-emboldened-antagonists-big-advertisers-1521998394>>

²⁰⁷ Arvind Hickman, Twitter signs up to MRC audit - here's why it matters, AdNews 25 October 2017, <<http://www.adnews.com.au/news/twitter-signs-up-to-mrc-audit-here-s-why-it-matters>>

²⁰⁸ Allison Schiff, Facebook Slowly Embraces MRC, Agrees to Independent Audit, Ad Exchanger, 10 February 2017, <<https://adexchanger.com/platforms/facebook-slowly-embraces-mrc-agrees-independent-audit/>>

Section 7: Effects on consumers

The following section addresses the impact of digital platforms on consumers. Digital platforms have fundamentally altered how consumers access and engage with news content. News Corp Australia accepts that digital platforms have been beneficial to consumers in a number of ways, however, these benefits must be balanced against the serious detriments, some of which have only come to light as a result of the investigative reporting of news publishers. News Corp Australia submits that digital platforms have a responsibility to acknowledge and address these concerns.

- | | |
|------|--|
| 3.18 | Describe the nature of the impacts (positive and negative) that digital platforms are having on consumers? What causes these impacts? Are these impacts temporary or ongoing? |
| 3.19 | What are the advantages and disadvantages of using digital platforms for consumers? |

1 Positive impacts

The proliferation of news on the internet gives the impression that consumers are exposed to a rich and wide choice of content. The positive impacts of digital platforms include that consumers can now access news instantly on any device, search for specific topics, interact with journalists and readers through comments, and share articles with friends and family.

2 Significant negative impacts

However, these positive impacts must be balanced against the serious negative impacts that digital platforms are having on consumers, as outlined below.

2.1 Price

Consumers are increasingly concerned about the price they pay to access apparently 'free' content, in terms of intrusive data collection and exposure to advertising. While consumers have long been conditioned by the practices of digital platforms to obtain content for 'free', they are becoming increasingly prepared to pay for content they value. However, as described in Section 4, digital platforms are continuing to engage in various practices that discriminate against or otherwise undermine paid content. While most news publishers offer all or some content to consumers for 'free', the quality and diversity of that content overall has diminished.

2.2 Quality

Digital platforms carry significant responsibility for the current state of news and journalism in Australia. While publishers seek to innovate and adjust to the digitalisation of news content, digital platforms are using their dominant positions to force publishers to publish content that best suits their commercial interests and to demote or exclude other forms of content.

As noted in Section 5 above, the practices of digital platforms have resulted in brand dilution, lower levels of engagement and fragmentation of news publications, ultimately leading to reduced incentives to invest in original and diverse content.

The decline of print media and the growth of the dominant digital platforms is putting intense pressure on publishers, leading to cost-pressures and reduced incentives to invest in original content. Digital

platforms have overseen a proliferation in fake news and the emergence of echo chambers or filter bubbles. We expand on these issues below.

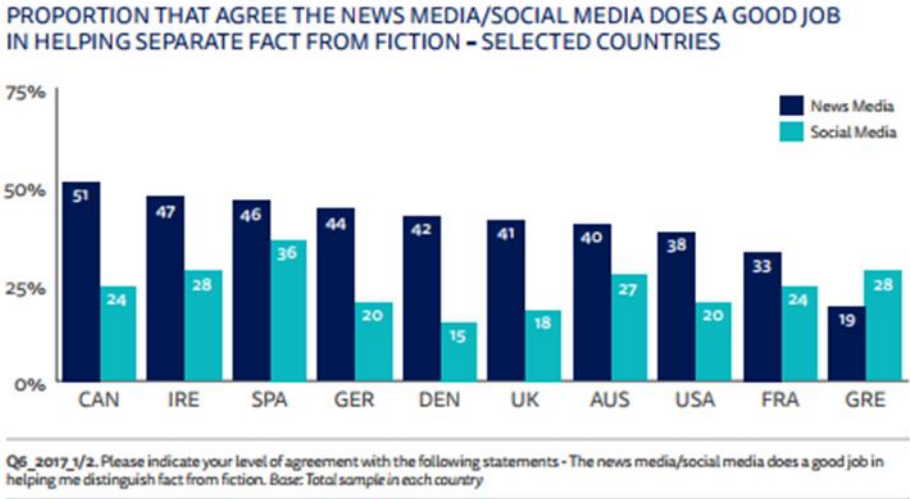
2.3 Proliferation of fake news

As a publisher, News Corp Australia is subject to the laws of defamation, privacy, intellectual property and the Australian Consumer Law. In addition, we are subject to Australian Press Council standards, which require factual material to be accurate and not misleading. Meanwhile, digital platforms are untethered to the truth, arguing instead they merely distribute content and therefore bear no responsibility to consumers to verify the accuracy of content.

The refusal of digital platforms to take responsibility for or moderate the content that appears on their platforms has given rise to a proliferation in fake news. Alarming, the phenomenon of fake news appears to be growing, with no clear oversight as to how it can be managed.²⁰⁹

The Reuters Institute Digital News Report 2017 found that in most jurisdictions respondents believed social media was significantly worse at separating fact from fiction than news media.

Figure 40: News media vs social media as a reliable source of news



Source: Reuters Institute Digital News Report 2017

Digital platforms encourage interaction and the spread of news, however, there is no oversight or fact-checking function that ensures that the content being circulated is reliable. A study by researchers at the Massachusetts Institute of Technology on the spread of stories on Twitter found that false stories spread faster and more broadly than those stories which were true.²¹⁰ Once false information has been

²⁰⁹ Charlie Warzel, Why can everyone spot fake news but YouTube, Facebook and Google?, BuzzFeed, 23 February 2018, <https://www.buzzfeed.com/charliewarzel/why-can-everyone-spot-fake-news-but-the-tech-companies?utm_term=.qkmzdX94R#.evjZGdY2e>

²¹⁰ Soroush Vosoughi, Deb Roy and Sinan Aral, The spread of true and false news, Science, Volume 359, Issue 6380, 2018, . <[onlinehttp://science.sciencemag.org/content/sci/359/6380/1146.full.pdf](http://science.sciencemag.org/content/sci/359/6380/1146.full.pdf)>, pages 1146-1151

published, it is difficult for publishers to ensure that corrections reach the consumers who have been misled.²¹¹

The US Presidential Election underscores the power of digital platforms to disrupt the democratic process. BuzzFeed reported that by the end of the US Presidential Election, more fake news content was shared via Facebook than accurate news content.²¹² During the course of the election it emerged that a small Macedonian town was the registered home of 100 pro-Trump websites.²¹³ Individuals in the town, including teenagers, were able to capitalise on digital platforms' algorithms and spread fake news stories. In return, they were rewarded with advertising revenue generated through Google's AdSense program. The individuals would simply collate and reproduce pro-Trump or anti-Clinton content, which was then widely shared across Facebook. Google eventually pulled the ads on these sites, but not before the stories were widely shared and the individuals responsible for sharing the false content were paid.

2.4 Echo chambers or filter bubbles

The dominance of digital platforms as gateways to news content puts them in a position to sort and select the content deemed relevant to consumers, and decide which news is featured prominently.²¹⁴ Google and Facebook are becoming what has been termed a 'bottleneck for the distribution of news', deciding which content to carry, promote or demote in SEO rankings. This raises concerns as to the overall impact on the range and diversity of news content that consumers are exposed to.²¹⁵ Indeed, a report commissioned by Google highlights:

...search engines select and sort the results in a way that is aimed at giving users what the search engine companies see as the most helpful and useful information...This selection and sorting is a mix of science and art: It uses sophisticated computerized algorithms, but those algorithms themselves inherently incorporate the search engine company engineers' judgements about what material users are most likely to find responsive to their queries.²¹⁶

Algorithms used by digital platforms limit consumers' exposure to diverse content, such that they are more likely to be exposed to content that they have expressed an interest in. Consumers' attention is a scarce resource and therefore algorithms are highly personalised to optimise content for each user's engagement. This means the algorithm will rank highest the content that each user is most likely to

²¹¹ See for example the New York Times' analysis of this phenomenon, which focuses on a false Tweet posted by Eric Tucker shortly after the 2016 US Presidential Election: Sapna Maheshwari, How Fake News Goes Viral: A Case Study, The New York Times, 20 November 2016 <<https://www.nytimes.com/2016/11/20/business/media/how-fake-news-spreads.html>>

²¹² Craig Silverman, This analysis shows how viral fake election news stories outperformed real news on Facebook, BuzzFeed, 17 November 2016, <https://www.buzzfeed.com/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook?utm_term=.sj8valDP5#.uhN4Y1woV>

²¹³ Samath Subramanian, Inside the Macedonian fake-news complex, Wired, 15 February 2017, <<https://www.wired.com/2017/02/veles-macedonia-fake-news/>>

²¹⁴ Robin Foster, News Plurality in a Digital World, Reuters Institute for the Study of Journalism, 2012, page 6, <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-11/News%20Plurality%20in%20a%20Digital%20World_0.pdf>

²¹⁵ Robin Foster, News Plurality in a Digital World, Reuters Institute for the Study of Journalism, 2012, page 29, <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-11/News%20Plurality%20in%20a%20Digital%20World_0.pdf>

²¹⁶ Google, First Amendment Protection for Search Engine Search Results, 2012, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2055364>

interact with (using actions such as clicks, likes, comments and shares as indicators of preferences).²¹⁷ For instance, when a consumer uses Facebook, Facebook collates data about that user and presents posts that it thinks consumers will be interested in, based on their previous history. Likewise, the presentation of articles on the Google search results page is informed by data collected about the user, including from other Google products such as YouTube and Gmail.

Studies indicate that consumers are more likely to engage with the digital platform if they are exposed to content that aligns with their values. For example, the University of Canberra Digital News Report 2017 found that of the 20 percent of adults who follow politicians on social media, only three percent are following both left- and right-wing politicians.

Displaying news items in this way risks creating an 'echo chamber' where consumers only consume news that concurs with their existing preferences and viewpoints. The less a consumer sees that is contrary to their viewpoints, the less opportunity they have to engage with that content. This compounds the effect of the echo chamber, as the algorithm will respond by showing the user less contentious material, feeding into a downward cycle that limits a consumer's exposure to contrary viewpoints. Echo chambers also contribute to the spread of fake news as consumers using algorithmic platforms for news and journalism are less likely to receive evidence about the true state of affairs that would counter an ideologically aligned but fake story.²¹⁸

Daniel Kahneman, the Nobel Prize winning behavioural economist, has described two systems of human cognition. System One is for fast, instinctive thought, requiring minimal exertion or concentration, which makes the thinking process highly efficient but is prone to errors. System Two represents a slower means of thinking, requiring significantly more engagement and effort but avoids instinctive errors. Adopting this model, the Shorenstein Center on Media, Politics and Plurality has commented that engagement-driven algorithms prey on System One thinking:

The content that a distribution algorithm identifies as engaging is likely to attract the user's interest regardless of how, upon reflection, the user might generally want to use the platform. Distribution algorithms aim to keep the user on the platform for as long as possible, which is not necessarily how long the user, upon reflection, would want to use it. In other words, there is a difference between providing a user what they reflectively want and what they can be tempted to consume.²¹⁹

2.5 Reduced pluralism

While digital platforms give the impression that they are presenting consumers with a wide range of relevant content, in fact, there has been a significant reduction in the choice and diversity of original and quality news and journalism. The ultimate effect has been a reduction in genuine pluralism.

²¹⁷ Wael Ghonim and Jake Rashbass, Transparency: What's Gone Wrong with Social Media and What Can We Do About It?, Harvard Kennedy School: Shorenstein Center on Media, Politics and Public Policy, 2018, page 4, <<https://shorensteincenter.org/wp-content/uploads/2018/03/Transparency-Social-Media-Wael-Ghonim.pdf?x78124>>

²¹⁸ Wael Ghonim and Jake Rashbass, Transparency: What's Gone Wrong with Social Media and What Can We Do About It?, Harvard Kennedy School: Shorenstein Center on Media, Politics and Public Policy, 2018, page 6, <<https://shorensteincenter.org/wp-content/uploads/2018/03/Transparency-Social-Media-Wael-Ghonim.pdf?x78124>>

²¹⁹ Wael Ghonim and Jake Rashbass, Transparency: What's Gone Wrong with Social Media and What Can We Do About It?, Harvard Kennedy School: Shorenstein Center on Media, Politics and Public Policy, 2018, page 7, <<https://shorensteincenter.org/wp-content/uploads/2018/03/Transparency-Social-Media-Wael-Ghonim.pdf?x78124>>

Google's AMP is a clear example of how Google is reducing plurality. Google preferences AMP content over non-AMP content by placing AMP content in a news carousel at the top of the search results page. Those publishers that do not adopt AMP are featured below the carousel. [Redacted]²²⁰ The rollout of AMP is having a real impact on traffic flows, which suggests that consumers are less likely to click on articles outside the carousel and are therefore only engaging with a limited range of publishers. Similarly on Facebook the algorithm change announced in January 2018 means that consumers will see up to 20 percent less news content on their newsfeed. This reduces the potential for Facebook users to be exposed to alternative news content.

The practices of digital platforms are having a wider impact on politics and society. In the past, consumers had common sources of information from which they drew political views. Now, consumers receive their news from personalised feeds, based on what an algorithm determines they will be interested in.

- 3.20 **What terms and conditions govern consumers' use of digital platforms? How do they differ from those which apply when consumers obtain news and journalistic content from other sources?**
- 3.21 **Are consumers generally aware of these terms and conditions? Specifically, do Australian consumers understand the value of the data they provide, the extent to which platforms collect and use their personal data for commercial purposes, and how to assess the value or quality of the service they receive from the digital platforms?**
- 3.22 **If you consider the collection of data part of the effective price paid by consumers for use of the digital platforms, to what extent are consumers aware of and provide informed consent for the collection and use of their data?**
- 3.23 **How do consumers value digital platforms' access to their data? Do consumers see it as a cost or a benefit (e.g. it enables customisation of the content displayed)? How does the access to or control over user data impact the relationship between digital platforms and consumers?**

Digital platforms are data-driven businesses that harvest huge amounts of personal information on users to market for commercial purposes. Many consumers are unaware of the degree to which their online presence is monitored and recorded and digital platforms engage in various practices to disguise the extent to which user data is collected and sold to third parties.

1 Data

Digital platforms' terms and conditions for use provide that consumers can access their services in exchange for providing personal data. Digital platforms collect substantially more data on consumers than regular websites, both in terms of the volume of data and the granularity of that data. Google and Facebook collect and combine vast amounts of data from their core services and their affiliated services and hardware devices, as well as from their arrangements with third party websites.

²²⁰ *The Daily Telegraph, The Courier Mail, Herald Sun, The Advertiser*. Note – only non-subscriber content is able to be indexed by Google in the AMP format. The current percentage of non-subscriber content on the metropolitan mastheads is approximately 50 percent. Content needs to be assigned to an AMP template for a single brand which limits syndicated or licensed content from appearing in the AMP format.

For example, users of any Google service must agree to Google's Data Policy which provides that Google collects and stores data including:²²¹

- Things users search for;
- Websites users visit;
- Videos users watch;
- Ads users click on or interact with;
- Users' location;
- Device information;
- IP address and cookie data;
- Emails sent and received on Gmail;
- Calendar events; and
- Users' personal information.

Facebook's Data Policy similarly provides that Facebook collects and stores data including.²²²

- Things uploaded or created by users (including additional data such as the location of where a photo was taken or the date the file was created);
- The way users engage with Facebook's services;
- Information other users post , for example photos, direct messages or contact information;
- Users' networks;
- Device information; and
- Information from third party partners and Facebook owned companies.

The information collected by publishers' websites from traffic to its website pales in comparison. Publishers typically collect data on which site a user has been referred from, how long they spend accessing material, and what material they access. However, the scope of the data collected is largely limited to the user's interaction with the publisher's website and consumers are likely have an intuitive understanding of the kind of data being collected.

The most valuable data for both digital platforms and publishers is longitudinal customer data, that is, data about the same group of subjects over a longer period of time, as it allows the data collector to see patterns in consumer behaviour. Rich longitudinal data includes regular data points about the same group of subjects collected through their use of different platforms and includes transactional information including searches, comments and saving functions, as opposed to data merely about browsing behaviour.

Given the reach of platforms and their efforts to retain users within their ecosystems, digital platforms have superior longitudinal data. Meanwhile, for publishers, data is increasingly fragmented, as consumers are increasingly accessing news content from within a digital platform, which prevents

²²¹ Google, *Your Data* <<https://privacy.google.com/your-data.html>>

²²² Facebook, *Data Policy* <<https://www.facebook.com/policy.php>>

publishers from developing a complete picture of the data. Publishers also do not collect the identities of users in the same way as digital platforms, for instance Facebook can track individual users across any page which is equipped with Facebook functionalities (for example, a Facebook like or comment function).

2 Consumer Awareness

It is not clear to what extent consumers understand the ways in which Google and Facebook use their data. Indeed, the full extent of how the platforms use data is only now becoming apparent. For instance, users may, or may not, be aware that Google scans the content of emails on the Gmail platform to display ads, and that Google collates data related to search queries. However, they may not be aware of the level of data captured by Google, including demographic information based on behavioural profiling. For instance, Google knows the current location and potentially even home and work addresses of users who use Google Maps. Facebook has patented a system which would allow it to estimate a user's socio-economic status, by collating various data points (for example travel, education level, where they live, their number of devices etc).²²³ Use of this system would create yet another layer of data, which allows Facebook to target users for advertising purposes, though it is not clear yet if Facebook has implemented or intends to fully implement the system.

Users may also not be aware about the level of access that digital platforms may provide to third parties of their data. The recent Cambridge Analytica story, which came to light as a result of investigative reporting by *The New York Times* and *The Observer*, brought this issue into sharp focus.

Case Study 12: Cambridge Analytica

In March 2018, it became widely known that Cambridge Analytica had obtained data concerning at least 87 million Facebook users from an academic at the University of Cambridge. Aleksandr Kogan created an online personality test app for use on Facebook for research purposes.²²⁴ The app was accessed by 300,000 Facebook users. However, Kogan was able to gain access to and scrape the personal information of those users' Facebook friends. The academic allegedly shared this data with Cambridge Analytica.²²⁵ Cambridge Analytica then used the personal data of these Facebook users to influence democratic processes, by creating psychographic profiles which would be used to design targeted political ads.²²⁶

Cambridge Analytica has since been accused of using these datasets to manipulate elections and referenda in the United States, the United Kingdom, and other countries, by targeting swing voters and influencing public opinion.²²⁷ Recent reports indicate that Australian political parties have also used data mining tools to influence voters across social media.

²²³ Ali Breland, Facebook patents technology that would estimate users' socioeconomic status, *The Hill*, 2 February 2018 <<http://thehill.com/policy/technology/372017-facebook-patents-tech-to-estimate-users-socioeconomic-status>>

²²⁴ Mark Zuckerberg, Facebook announcement, Facebook, 22 March 2018, <<https://www.facebook.com/zuck/posts/10104712037900071>>

²²⁵ Mark Zuckerberg, Facebook announcement, Facebook, 22 March 2018, <<https://www.facebook.com/zuck/posts/10104712037900071>>

²²⁶ Al Jazeera, Cambridge Analytica and Facebook: The scandal so far, 28 March 2018, <<https://www.aljazeera.com/news/2018/03/cambridge-analytica-facebook-scandal-180327172353667.html>>

²²⁷ See for example Carole Cadwalladr, The great British Brexit robbery: how our democracy was hijacked, *The Guardian*, 7 May 2017, <<https://www.theguardian.com/technology/2017/may/07/the-great-british-brexite-robbery-hijacked-democracy>>; Emma Graham-Harrison,

The access and use of data by Cambridge Analytica for purposes that were not known to consumers when the data was obtained has caused widespread concern.

Following the incident, reports claimed that Facebook collects the call and text history data of consumers who use Android phones through contact imports.²²⁸ Facebook has publicly responded that it only collects data on those consumers who opt-in to the feature upon installing Facebook to their phones, however the public response indicates that users did not realise they had 'opted-in' to this feature, while some users have alleged they did not grant permission at all.²²⁹

It is clear that digital platforms collect a vast amount of personal data, even where consumers are not online, and therefore may not be aware that the platforms are still collecting their data.²³⁰ For instance, if a consumer goes to the shops and buys a product, they may use a loyalty card or a rewards program; once that transaction has been processed, a third party data collector may acquire that purchase information and on-sell it to another company for marketing purposes. Ultimately, the data collected at the point of purchase such as an email address or phone number can be matched to a Facebook account. This process can similarly be undertaken when a consumer logs into a free Wi-Fi hotspot, or downloads an app to their phone.

3 Informed Consent

Consumers are parting with substantially more data than they may be aware of, and as a result arguably have not provided their informed consent for the collection and/or use of their data by the platforms. Further, digital platforms do not always make clear what default settings automatically apply to consumers, and what functionalities consumers have to actively opt-out of. If consumers opt-in by default, they arguably have not given their informed consent, as they were denied the opportunity to make this active choice.

In Germany, a recent decision of a Berlin regional court touched upon consent to data collection and opt-in policies. A Berlin regional court found that Facebook does not provide enough information to consumers to truly allow them to give informed consent to the collection of their data.²³¹ Of additional concern was the fact that Facebook automatically opts consumers in to certain settings and services, rather than consumers actively electing to opt in, such as with respect to certain location services. Facebook has stated that it will appeal the decision.

Carole Cadwalladr and Hilary Osborne, Cambridge Analytica boasts of dirty tricks to swing elections, *The Guardian*, 20 March 2018, <<https://www.theguardian.com/uk-news/2018/mar/19/cambridge-analytica-execs-boast-dirty-tricks-honey-traps-elections>>; Carole Cadwalladr, Cambridge Analytica's ruthless bid to sway the vote in Nigeria, *The Guardian*, 22 March 2018, <<https://www.theguardian.com/uk-news/2018/mar/21/cambridge-analyticas-ruthless-bid-to-sway-the-vote-in-nigeria>>; Al Jazeera, Cambridge Analytica and Facebook: The scandal so far, 28 March 2018, <<https://www.aljazeera.com/news/2018/03/cambridge-analytica-facebook-scandal-180327172353667.html>>

²²⁸ Catherine Shu, Facebook denies it collects call and SMS data from phones without permission, *Tech Crunch*, 26 March 2018, <<https://techcrunch.com/2018/03/25/facebook-denies-it-collects-call-and-sms-data-from-phones-without-permission/>>

²²⁹ Sean Gallagher, Facebook scraped call, text message data for years from Android phones, *Ars Technica*, 25 March 2018, <<https://arstechnica.com/information-technology/2018/03/facebook-scraped-call-text-message-data-for-years-from-android-phones/>>

²³⁰ Joanna Stern, Facebook Really Is Spying on You, Just Not Through Your Phone's Mic, *The Wall Street Journal*, 7 March 2018, <<https://www.wsj.com/articles/facebook-really-is-spying-on-you-just-not-through-your-phones-mic-1520448644>>

²³¹ Alex Hern, Facebook personal data use and privacy settings ruled illegal by German court, *The Guardian*, 13 February 2018, <<https://www.theguardian.com/technology/2018/feb/12/facebook-personal-data-privacy-settings-ruled-illegal-german-court>>

In May 2018, the European Union's General Data Protection Regulation (GDPR) will come into effect. The GDPR imposes sweeping new rules relating to data privacy in the EU, and is expected to heavily impact both Google and Facebook. The GDPR imposes a 'purpose limitation' principle, which requires that personal data only be collected for 'specific, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes.'²³² Google and Facebook will be unable to use their user data for advertising purposes without explicit user permission.²³³

The pervasiveness of digital platforms, both in terms of principal service offerings and affiliated partnerships, makes them a 'must have' for many consumers. This calls into question whether consumer consent to the collection and commercialisation of personal data is valid. Various studies indicate that consumers are unlikely to read the terms and conditions of online agreements.²³⁴ Further, consumers lack bargaining power or the ability to negotiate and therefore have little incentive to review the full terms of access.

Digital platforms also regularly amend and update the terms of their privacy policies. For instance, in 2016, WhatsApp (which is owned by Facebook) changed its terms and conditions to include a provision which stipulated that WhatsApp would share user data, including phone numbers, with Facebook.²³⁵ Although users could partially opt out of this data sharing policy (i.e. for advertising purposes and for product-related purposes), they needed to read the terms and conditions to find this out. The change in policy drew warnings from regulatory authorities – for instance, the French data protection authority warned Facebook it needed informed user consent,²³⁶ and the German data protection authority ordered Facebook to stop collecting the data altogether.²³⁷ Similarly, the European Union's data regulatory group noted that simply providing a privacy policy update was not sufficient to inform consumers and obtain consent.²³⁸ This warning followed the European Commission imposing a fine of €110 million on Facebook for providing misleading information with respect to the takeover of WhatsApp. During the merger review process, Facebook had asserted that it would not be able to match user accounts on the Facebook and WhatsApp platforms. However, the European Commission later found that Facebook staff knew this was possible at the time of the merger.²³⁹

²³² European Union, General Data Protection Regulation (Regulation (EU) 2016/679), Article 5, paragraph 1(b)

²³³ Dr Johnny Ryan, How the GDPR will disrupt Google and Facebook, Page Fair, 30 August 2017, <https://pagefair.com/blog/2017/gdpr_risk_to_the_duopoly/>

²³⁴ David Berreby, Click to agree with what? No one reads terms of service, studies confirm, The Guardian, 4 March 2017, <<https://www.theguardian.com/technology/2017/mar/03/terms-of-service-online-contracts-fine-print>>

²³⁵ Natasha Lomas, WhatsApp to share user data with Facebook for ad targeting - here's how to opt out, Tech Crunch, 26 August 2016, <<https://techcrunch.com/2016/08/25/whatsapp-to-share-user-data-with-facebook-for-ad-targeting-heres-how-to-opt-out/>>

²³⁶ Fioretti, French privacy watchdog raps WhatsApp over Facebook data sharing, Reuters, 19 December 2017, <<https://www.reuters.com/article/us-whatsapp-privacy-france/french-privacy-watchdog-raps-whatsapp-over-facebook-data-sharing-idUSKBN1EC285>>

²³⁷ Samuel Gibbs, Germany orders Facebook to stop collecting WhatsApp user data, The Guardian, 27 September 2016, <<https://www.theguardian.com/technology/2016/sep/27/germany-orders-facebook-stop-collecting-whatsapp-phone-numbers-user-data>>

²³⁸ Samuel Gibbs, Germany orders Facebook to stop collecting WhatsApp user data, The Guardian, 27 September 2016, <<https://www.theguardian.com/technology/2016/sep/27/germany-orders-facebook-stop-collecting-whatsapp-phone-numbers-user-data>>

²³⁹ Jennifer Rankin, Facebook fined £94m for 'misleading' EU over WhatsApp takeover, The Guardian, 18 May 2017, <<https://www.theguardian.com/business/2017/may/18/facebook-fined-eu-whatsapp-european-commission>>

Google has also amended its privacy policies unilaterally and without obtaining informed consent from consumers. In 2016, Google began harvesting data through DoubleClick, removing the line in its privacy policy which said it would not combine DoubleClick cookie information with personally identifiable information without consent from users.²⁴⁰

4 Trade-Off

Digital platforms are trading on consumers' preference for instant convenience at the price of their privacy. A 2017 study by Susan Athey of Stanford highlighted the disconnect between a consumer's stated stance on privacy and their actual real life actions. The study tested whether a small incentive could subvert an individual's stated stance on privacy – researchers offered one group of students a free pizza — as long as they disclosed three friends' email addresses.²⁴¹ A majority of participants chose the free pizza over their friends' privacy.

The study demonstrated that participants are willing to give up certain privacy protections if it saves them hassle or inconvenience. This may explain the decision of many consumers to log into a variety of apps using their Facebook login, rather than signing in independently with a different verification method.

Although it might be arguable that consumers are simply willing to give up their data in exchange for use of the services offered by digital platforms, it is more likely that the dominance of digital platforms means consumers feel powerless and are resigned to giving away their data.²⁴² One report highlighted that American consumers felt that their choices were being restricted, and that it is ultimately futile to attempt to manage the collection of their personal data.²⁴³ Given the power imbalance between digital platforms and consumers, there is a role for regulators to empower consumers to resist the collection and commercialisation of their data.

3.24 Have digital platforms changed the price of media content supplied to Australian consumers?

3.25 Have digital platforms changed the quality or choice of media content supplied to Australian consumers? Has the use of algorithms to select content changed the diversity of news supplied to consumers?

We refer to our response to 3.18-3.19 above. We reiterate that while digital platforms have proliferated access to 'free' news and journalism, it has come at a significant cost, which is leading to widespread consumer harm. In particular, the practices of digital platforms have led to:

- A reduction in original and diverse news and journalism, as a result of digital platforms undermining publishers' efforts to effectively monetise content;

²⁴⁰ Julia Angwin, Google Has Quietly Dropped Ban on Personally Identifiable Web Tracking, ProPublica, 21 October 2016, <<https://www.propublica.org/article/google-has-quietly-dropped-ban-on-personally-identifiable-web-tracking>>

²⁴¹ May Wong, Pizza over privacy? Stanford economist examines a paradox of the digital age, Stanford News, 3 August 2017, <<https://news.stanford.edu/2017/08/03/pizza-privacy-stanford-economist-examines-paradox-digital-age/>>

²⁴² Natasha Lomas, The Online Privacy Lie is Unraveling, Tech Crunch, 7 June 2015, <<https://techcrunch.com/2015/06/06/the-online-privacy-lie-is-unraveling/>>

²⁴³ See Joseph Turow, Michael Hennessy and Nora Draper, The Tradeoff Fallacy: How Marketers Are Misrepresenting American Consumers and Opening Them Up to Exploitation, Annenberg School for Communication, University of Pennsylvania, 2015, <https://www.asc.upenn.edu/sites/default/files/TradeoffFallacy_1.pdf>

- An illusion of choice and relevance, when in fact digital platforms prioritise content that benefits their business models (e.g. AMP stories within a news carousel at the top of search results) and trap consumers, knowingly or unknowingly, within the platform so that they collect more data and sell more advertising;
- The fragmentation of news content, which is undermining brand value and the ability of publishers to cross-subsidise diverse content;
- An increase in echo chambers (or filter-bubbles) as a result of algorithms prioritising certain types of content that generate greater advertising revenues;
- An increase in 'fake news' invented to generate revenue, or to discredit other news stories;²⁴⁴ and
- The rapid spread of misinformation, as there is less oversight and fact-checking of information published and disseminated on digital platforms.

The reach of digital platforms has given rise to widespread cynicism and distrust on the part of consumers. A recent report indicates that consumers who rely on social media and online news sources as their main source of news are less likely to trust most news most of the time.²⁴⁵ The intermediation between publishers and consumers that digital platforms have created has made it more difficult for publishers to establish a relationship of trust and to position themselves as reliable and quality sources of news.

As noted above, digital platforms have also given rise to widespread concerns about privacy and personal data. Consumers are not always aware of the extent to which digital platforms collect their personal data, and have little control over what happens to that data once collected. Further, as the Cambridge Analytica story has brought to light, digital platforms do not appear to have appropriate safeguards to prevent the misuse or even theft of user data.

Digital platforms seek to attract and retain users on their platforms so they can collect highly personalised user data to market for commercial purposes. Consumers seek original and relevant content about news and current affairs. Consumers may be willing to pay for quality news services and increasingly so with the rise of fake news and data breaches. However, digital platforms are continuing to undermine publishers' efforts to monetise content through subscriptions and are adopting coercive measures that perpetuate these negative impacts.

²⁴⁴ Reuters Institute for the Study of Journalism, Digital News Report 2017, page 20, <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>

²⁴⁵ News & Media Research Centre, Digital News Report: Australia 2017, page 60, <<http://apo.org.au/system/files/95161/apo-nid95161-346236.pdf>>

Section 8: Long-term effects

3.26 How have the channels used by Australian consumers' to access news and journalistic content (e.g. TV, newspapers, social media, search engines) changed in the past five to ten years? How will this change in the next five to ten years?

Over the last five years, consumers have increasingly shifted to online news as their primary source of news content.²⁴⁶ This has seen a strong and consistent decline in the circulation of print newspapers; the number of Australians accessing news via print was down 17 percentage points in the latest Digital News Report 2017.²⁴⁷ The secular decline in print media is affecting all publishers in the Australian industry, making the viability of traditional print formats in the digital age increasingly difficult.

The growing consumer preference for digital media has also impacted other traditional media platforms, including television and radio. While television remains an important source of news, consumers are increasingly accessing television via digital means, including video-on-demand and streaming services. The same is the case for radio, where podcasts are experiencing growth. The result is that while consumers in the past would likely have sourced their news and journalistic content from multiple platforms, the internet is increasingly providing a 'one-stop shop'. It is expected this trend will continue over the next five years.

1 Online news

Online news consumption has increased significantly and the gap between online news and terrestrial television is narrowing. Although terrestrial television remains the main source of news for Australians, digital news is the preferred medium for those under 35 years old.²⁴⁸

According to Reuters Institute Digital News Report 2017 (Australia), online news is the most used source of news content for Australians with 74 percent of consumers surveyed sourcing news online (in any manner), and 43 percent citing online as their main source of news.²⁴⁹ This compares to only 36 percent of Australians accessing news from print, and just 9 percent using it as their main news source. Television remains an important source of news, with 63 percent of those surveyed sourcing news from television and 36 percent citing it as their main source of news. These figures are demonstrated in Figure 41 below.²⁵⁰

It should be noted however, that television and radio news services were the original aggregators of newspaper content and it remains the case that a vast proportion of the news and commentators that

²⁴⁶ PwC Global Entertainment and Media Outlook, 2016-2020

²⁴⁷ Survey results of 2,004 adults who accessed news once a month or more. News & Media Research Centre, Digital News Report: Australia 2017, page 19, <<http://apo.org.au/system/files/95161/apo-nid95161-346236.pdf>>

²⁴⁸ News & Media Research Centre, Digital News Report: Australia 2017, page 7, <<http://apo.org.au/system/files/95161/apo-nid95161-346236.pdf>>

²⁴⁹ Reuters Institute for the Study of Journalism, Digital News Report 2017, pages 116-117, <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>

²⁵⁰ News & Media Research Centre, Digital News Report: Australia 2017, pages 2 and 7, <<http://apo.org.au/system/files/95161/apo-nid95161-346236.pdf>>

consumers access on television and radio originated as newspaper content. It is dangerous to assume that if newspaper journalism disappears it will be replaced by television journalism.

Figure 41: Sources of news

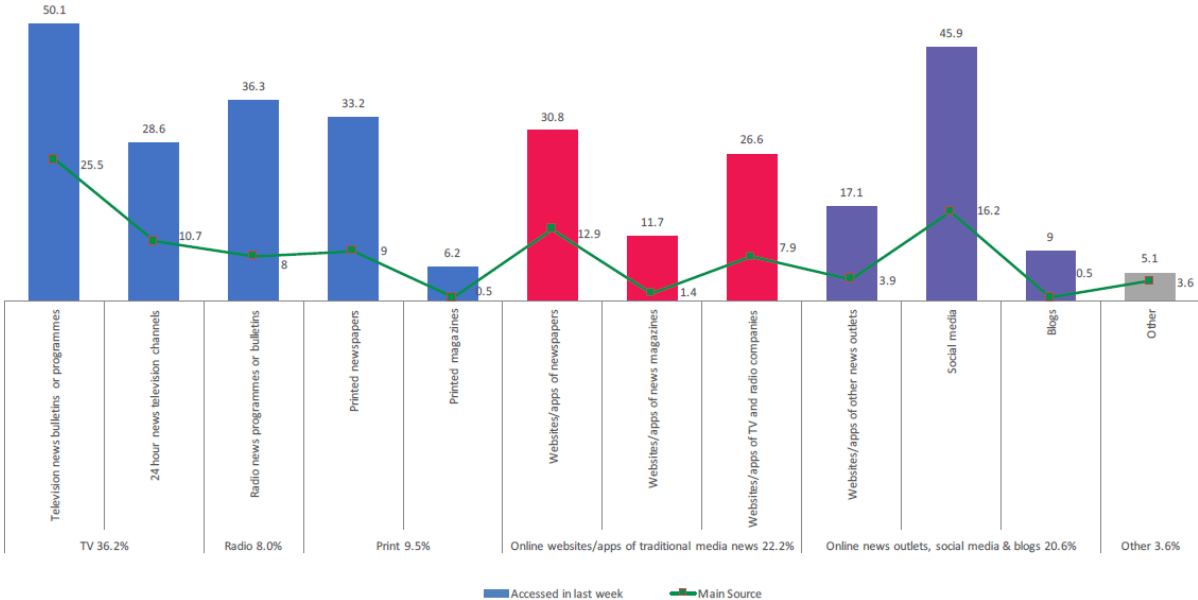


FIGURE 1.1: NEWS ACCESSED IN THE LAST WEEK AND MAIN SOURCE OF NEWS (%)
 Q3. Which, if any, of the following have you used in the last week as a source of news? Please select all that apply.
 Q4. You say you've used these sources of news in the last week, which would you say is your MAIN source of news?

Source: Reuters Institute Digital News Report 2017

The proportion of online news consumption is significantly higher in younger demographics. 38 percent of 18-24 year olds use social media as their main source of news, followed by 28 percent for online news and 25 percent for TV. For 25-34 year olds, 32 percent cite online news, 28 percent cite TV news and 25 percent cite social media as their main source of news content.²⁵¹

Use of mobile devices for news consumption continues to grow. Computers are more popular with older generations while younger generations predominantly use mobile devices. When asked which device the respondents used to access the news, 57 percent of 18-24 year olds said they used their mobile device, whereas 63 percent of 65+ year olds used a desktop or laptop. See Figure 42 below, which is taken from the Reuters Institute Digital News Report 2017 (Australia).

²⁵¹ News & Media Research Centre, Digital News Report: Australia 2017, pages 2 and 7, <<http://apo.org.au/system/files/95161/apo-nid95161-346236.pdf>>

Figure 42: Devices used for accessing news

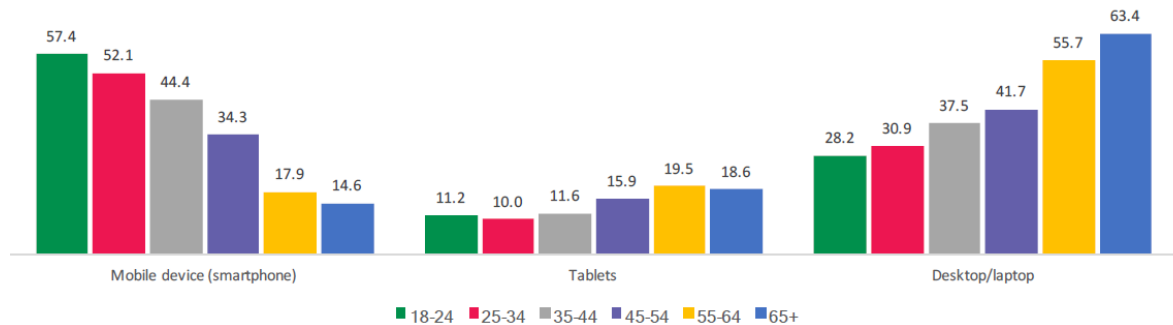


FIGURE 1.3: HOW WE ACCESS NEWS BY AGE (%)

Q8b. Which, if any, of the following devices have you used to access news in the last week? Please select all that apply.

Source: Reuters Institute Digital News Report 2017

A significant portion of news and journalistic content is accessed through the gateways of search engines and social media. The Reuters Institute Digital News Report 2017 (Australia) found 46 percent of Australian respondents reported accessing news through social media, with 16 percent citing it as their main source of news.²⁵²

[Redacted]

When consumers access news content through these external gateways, it is more likely to be the external gateway rather than the publisher that they recall and credit for the content. The Reuters Institute Digital News Report 2017 conducted a study of 3,000 users in the UK, who had their usage tracked. The study found that around two thirds of participants remembered the path they found a news story by (such as Google or Facebook) but less than half could recall the name of the news brand itself when coming from search (37 percent) and social (47 percent).²⁵³ The Report also found that in focus group studies, users would credit gateways like Facebook or Twitter for breaking certain news stories, when in reality the stories were broken by news publishers.²⁵⁴

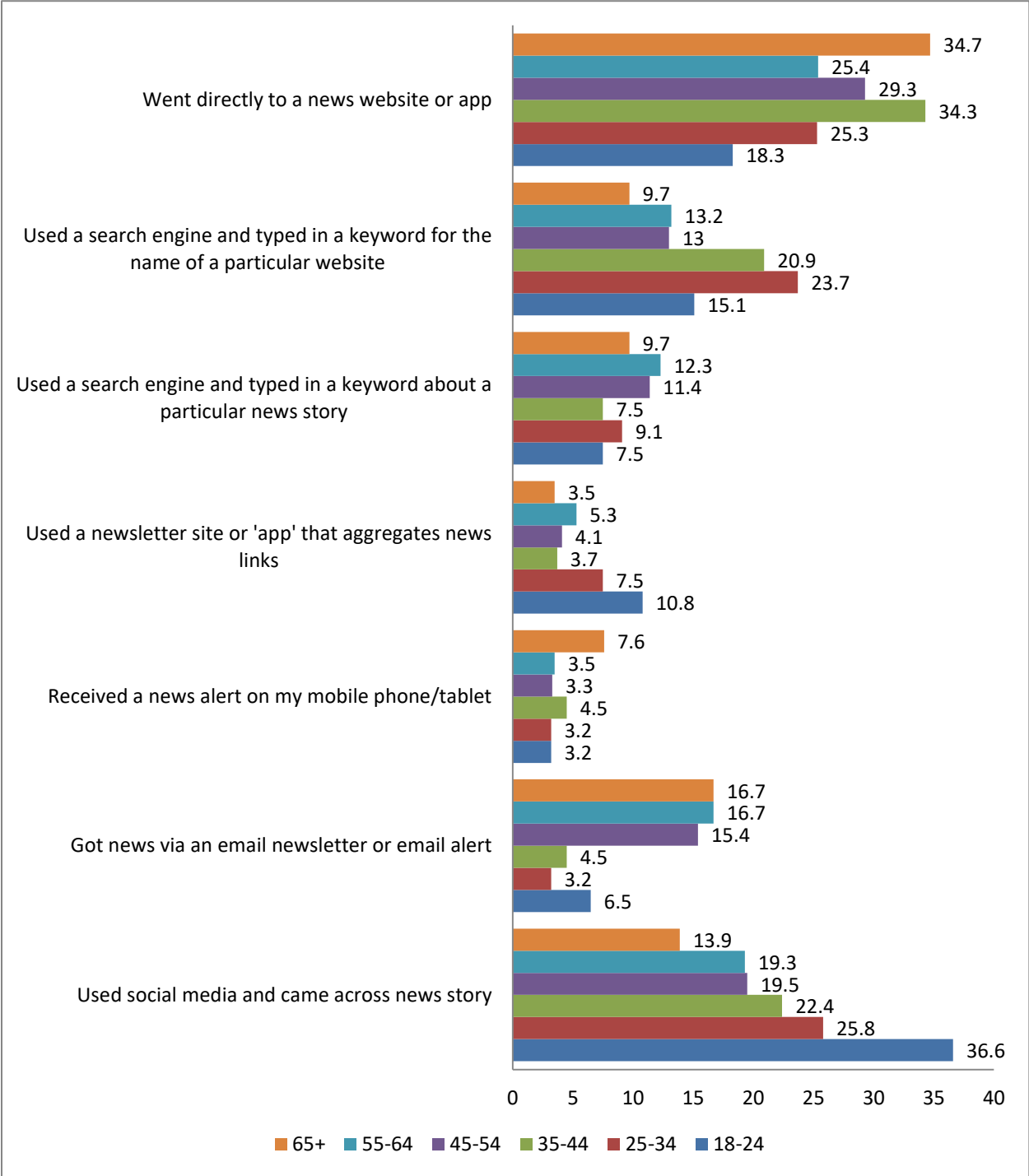
Traffic data reveals that people's preference for accessing news through online gateways correlates strongly with their age. Younger people are far more likely to use social media, while older people exhibit a strong preference for accessing publisher content directly. For example, 36.6 percent of 18-24 year olds used social media as their pathway to news articles, whereas 34.7 percent of 65+ year olds went directly to a news website or application. The trend towards accessing news via social media is therefore expected to continue and increase over time. The distinction by age is shown in the diagram below.

²⁵² Reuters Institute for the Study of Journalism, Digital News Report 2017, pages116-117, <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>

²⁵³ Reuters Institute for the Study of Journalism, Digital News Report 2017, page 116, <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>

²⁵⁴ Reuters Institute for the Study of Journalism, Digital News Report 2017, page 116, <<http://www.digitalnewsreport.org/survey/2017/overview-key-findings-2017/>>

Figure 43: Traffic data



Source: Reuters Institute Digital News Report 2017

Digital subscriptions

Digital subscriptions for the major Australian publishers increased in late 2017, following the withdrawal of Google's FCF policy. [Redacted]

2 Printed news

Print circulations continue to decline and this trend is expected to continue. In August 2017, the Audited Media Association of Australia reported on six months' worth of circulation numbers. The report found that all print publications declined between 2 and 18 percent compared with the same period last year, as seen in the table below.²⁵⁵

Figure 44: Print circulation figures 2016-2017

	Masthead	Circulation Jan-Jun 2017	Same period 2016	Change
Metro weeklies	Canberra Times	15,298	17,244	-12.7 percent
	Daily Telegraph	221,641	239,018	-7.8 percent
	Sydney Morning Herald	88,634	98,472	-11.1 percent
	Northern Territory News	11,279	12,870	-14.1 percent
	Brisbane Courier Mail	135,007	147,122	-9.0 percent
	Adelaide Advertiser	112,097	120,931	-7.9 percent
	Tasmanian Mercury	28,265	30,452	-7.7 percent
	The Age	83,229	92,841	-11.5 percent
	The Herald Sun	303,140	330,776	-9.1 percent
Nationals	Australian Financial Review	44,635	49,900	-11.8 percent
	The Australian	94,448	99,027	-4.9 percent
	Australian Financial Review Weekend	48,773	53,121	-8.9 percent
	Weekend Australian	219,242	223,926	-2.1 percent
Saturdays	Canberra Times (Sat)	23,470	26,894	-14.6 percent
	Daily Telegraph (Sat)	221,996	233,546	-5.2 percent
	Sydney Morning Herald (Sat)	168,470	186,918	-11.0 percent
	Northern Territory News (Sat)	14,624	17,252	-18.0 percent
	Brisbane Courier Mail (Sat)	166,502	179,149	-7.6 percent
	Adelaide Advertiser (Sat)	149,005	162,731	-9.2 percent
	Tasmanian Mercury (Sat)	37,646	40,918	-8.7 percent
	The Age (Sat)	144,574	159,801	-10.6 percent

²⁵⁵ Zoe Samios, ABCs: Half yearly circulation audit sees many newspapers suffer 10% declines while Sunday Telegraph falls below 400,000, Mumbrella, 22 August 2017, <<https://mumbrella.com.au/abcs-sunday-telegraph-falls-below-400000-as-weekend-newspapers-decline-466270>>

	The Herald Sun (Sat)			
Sundays	Canberra Times (Sun)	15,775	18,305	-16 percent
	Sunday Telegraph	378,449	410,137	-8.4 percent
	Sun Herald	164,652	188,806	-14.7 percent
	Sunday Territorian	12,772	14,214	-11.3 percent
	Sunday Mail (QLD)	289,888	318,830	-10 percent
	Sunday Mail (SA)	182,462	200,102	-9.7 percent
	Sunday Tasmanian	36,212	38,925	-7.5 percent
	Sunday Age	115,056	128,478	-11.7 percent
	Sunday Herald Sun	349,252	384,993	-10.2 percent

Source: Mumbrella

While publishers are continually seeking to adapt to the new online environment of news distribution, the declining circulation of print news has resulted in the closure or reduction of a number of print publications. Closures have been particularly acute for local content publications.²⁵⁶

The trend towards print closures has been observed globally. In 2016, UK national paper *The Independent* ceased all print editions and moved to a digital-only offering. It was the first national newspaper in the UK to do so.²⁵⁷ A number of European and American newspapers have either transitioned to digital-only, or digital Monday to Friday.²⁵⁸ More recently, in August 2017, the English language Argentinian paper *Buenos Aires Herald* closed after 140 years of publication.²⁵⁹ This came less than a year after it reduced circulation from daily to weekly.

These examples highlight the rapid structural changes occurring in the delivery of news and content, which no print publisher is immune from.

²⁵⁶ For instance, in January 2018, NewsLocal, NCA's community newspaper business in New South Wales, reduced print publication of the *Manly Daily* to just two days per week. In December 2017, Fairfax's Australian Community Media closed six Sydney newspapers, citing unsustainable long-term commercial viability. This included *Hills New*, *Rouse Hill Courier*, *Penrith City Gazette*, *St Marys-Mt Druitt Star*, *Blacktown Sun* and *Parramatta Holroyd Sun*. In June 2016, Leader Community Newspapers, News' community newspaper business in Victoria, ceased publishing seven Leader mastheads that were no longer commercially viable. The Leader publications affected included *Wyndham*, *Hobsons Bay*, *Melton*, *Brimbank*, *Melbourne/Yarra*, *Berwick* and *Free Press*. In March 2016, as part of an ongoing operational restructure and review of its community publishing business, Fairfax announced the move to a compact print format for *The Canberra Times*, the closure of two community print newspapers and their associated websites (*Cooma-Monaro Express* and *Summit Sun* in Jindabyne) and the merger of *The Queanbeyan Age* with the Queanbeyan edition of *The Chronicle*.

²⁵⁷ The Independent, The Independent becomes the first national newspaper to embrace a global, digital-only future, The Independent, 12 February 2016, <<http://www.independent.co.uk/news/media/press/the-independent-becomes-the-first-national-newspaper-to-embrace-a-global-digital-only-future-a6869736.html>>

²⁵⁸ Rod Myer, Fairfax moves a step closer to ending print run, The New Daily, 17 February 2016, <<http://thenewdaily.com.au/money/2016/02/17/fairfax-step-closer-ending-print/>>

²⁵⁹ Reuters, Buenos Aires Herald to close after more than 140 years of publication, The Guardian, 2 August 2017, <<https://www.theguardian.com/world/2017/aug/01/buenos-aires-herald-to-close-after-140-years-argentina>>

3 Television news

Television news is still a widely used and important source of news, however, traditional television viewing is being eroded and online video consumption is increasing. A study by the Reuters Institute for the Study of Journalism in 2016 found that television viewing in countries such as the US and the UK had declined by 3 to 4 percent per year on average since 2012. The decline in viewing among younger people is more pronounced, both for television viewing in general and for television news specifically.²⁶⁰

This trend is reflected in Australia. The 2017 Online & On Demand report, commissioned by Screen Australia, found that subscription video on demand, including Netflix, Amazon Prime and Stan, is a clear growth area with 68 percent of 2017 respondents using such services, compared to 37 percent in 2014. Similarly, use of broadcaster catch-up services has also increased to 87 percent (from 74 percent in 2014). Use of 'Other AVOD' services like YouTube and video on Facebook continues to grow, with 82 percent of respondents accessing professionally produced content via these platforms (up from 70 percent in 2014).²⁶¹

4 Radio news

Radio has adapted to digital substitution with on-demand services and podcasts. In 2016, the ABC conducted a study of 1,100 respondents on the ABC Yourspace platform. The study found that, on average, podcast audiences listened to an average of 5.5 podcasts per week and that News, Current Affairs & Politics was the genre most widely listened to (59 percent).²⁶² However, the on-demand nature of podcasts means that they do not tend to provide breaking news, but rather focus more on in-depth investigations of niche subjects.

3.27 How have the types of news and journalistic content accessed by Australian consumers' changed in the past five to ten years? How will this change in the next five to ten years?

With the shift online, the types of news and journalistic content Australians access is also changing. Content, including 'free' news content, accessible by consumers via search and social media generates revenue for digital platforms in the form of advertising. As stated previously, the platforms collect and sell user data to advertisers, so that advertisers can create targeted advertising campaigns. The aim of digital platforms is to retain users within the platform and to ensure they return to it as much as possible.

The practices of digital platforms to retain users within their ecosystems have impacted the types of news and journalism that Australians are being exposed to. In particular, there has been a proliferation of rapid, undifferentiated – even copied – content, and a deterioration in long-form journalism and local content. As indicated at 1.3-1.4 above, while News Corp Australia does not believe different categories of news are more worthy than others, we do believe that a broad and deep range of original and local content is vital for the sustainability of news and journalism in Australia.

²⁶⁰ Rasmus Kleis Nielsen and Richard Sambrook, What is happening to television news?, Reuters Institute, 2016
<<https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-06/What%20is%20Happening%20to%20Television%20News.pdf>>

²⁶¹ Screen Australia, Report released: Australian Trends in Online and On-Demand Viewing, Screen Australia, 27 February 2018
<<https://www.screenaustralia.gov.au/sa/media-centre/news/2018/02-27-report-australian-trends-online-on-demand>>

²⁶² ABC Radio, New podcast research offers deeper insight into Australian podcast audiences, ABC RadioMediaRoom, 30 September 2016,
<<https://radio.press.abc.net.au/new-podcast-research-offers-deeper-insight-into-australian-podcast-audiences>>

Unless digital platforms change their conduct and commercial arrangements associated with presenting content on their platforms, News Corp Australia expects these problems to continue.

As discussed above, prior to the advent of digital platforms, newspapers worked in a virtuous circle where readership and advertising was re-invested into content creation. This investment cycle allowed publishers to cover a broad range of issues and events, including in-depth investigations and exposés. As readers had a direct relationship with publishers, brand became a proxy for trust and readers were prepared to access and engage with content that might challenge their existing views and values.

Digital platforms are, however, engaging in various practices that undermine this virtuous circle and have created perverse incentives to create unreliable content from dubious and unascertainable provenance that supports the commercial interests of the digital platforms. As discussed at Section 6, this has led to a proliferation in fake news and the emergence of echo chambers or filter bubbles.

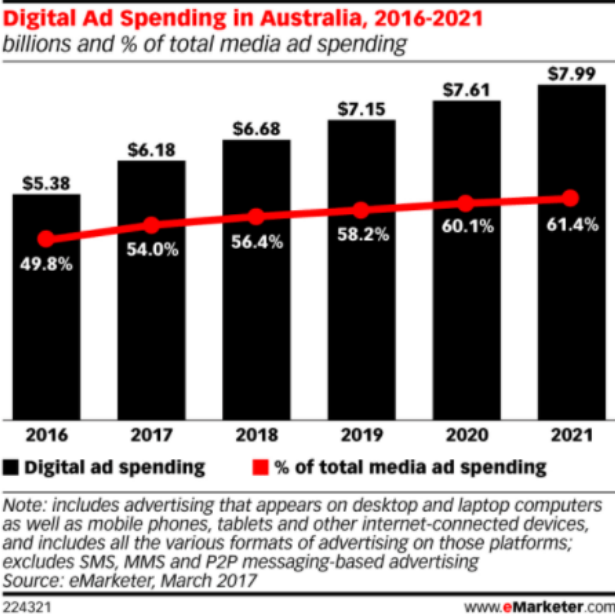
3.28 How has Australian advertising expenditure changed over time? In particular, how have digital platforms impacted the advertising revenue of media companies, especially those involved in the supply of news and journalistic content, and how have media markets responded?

Digital advertising now represents the majority of advertising expenditure, with advertising on traditional media, such as television and newspapers undergoing long-term decline. According to the March 2018 edition of Zenith's Advertising Expenditure Forecasts, online advertising grew by 13.7 percent in 2017 to US\$204 billion and accounted for 37.6 percent of global advertising expenditure in 2017, up from 34.3 percent in 2016. Zenith predicts that online advertising will exceed 40 percent globally in 2018.²⁶³ Likewise, the IAB/PwC Online Advertising Expenditure Report revealed that the Australian online advertising market increased by AUD\$799 million to reach AUD\$7.6 billion for the financial year in 2017, representing growth of 11.7 percent over the prior financial year.²⁶⁴ eMarketer predicts that online advertising will continue to grow, reaching AUD\$7.99 billion in 2021 and representing 61.4 percent of overall advertising expenditure.

²⁶³ Mediaweek, Zenith Advertising Expenditure Forecasts 2018: Advertisers invest more in digital, Oz ad spend to rise, Mediaweek, 26 March 2018 <<https://mediaweek.com.au/zenith-advertising-expenditure-forecasts-2018/>>

²⁶⁴ DMA News Desk, Australia's online ad spend reaches \$7.6 billion in 2017, 18 September 2017 <<http://www.digitalmarket.asia/australias-online-ad-spend-reaches-7-6-billion-2017>>

Figure 45: Digital ad spending in Australia 2016-2021



Source: eMarketer

Most of the significant growth in online advertising is attributable to Google and Facebook and this trend is expected to continue. Mary Meeker reported that Google and Facebook accounted for 85 percent of internet advertising growth in the United States.²⁶⁵ Similarly, eMarketer has reported that Google and Facebook account for 63.1 percent of all US digital advertising spend.²⁶⁶

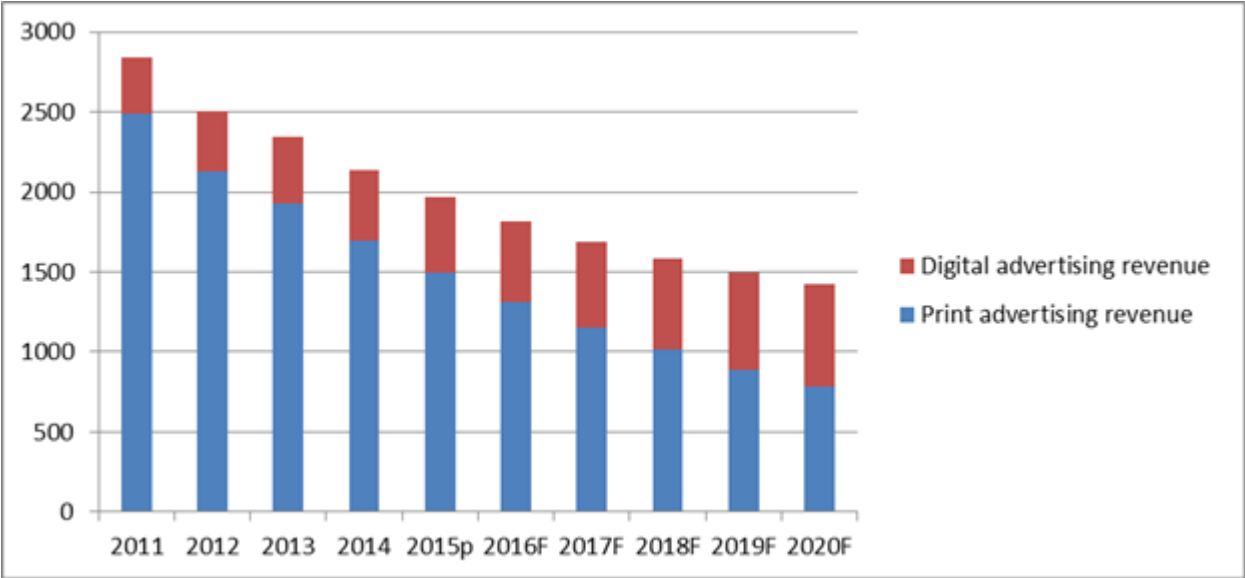
As consumers continue to migrate away from printed news to online news, so too do advertisers. Publishers are therefore increasingly focusing on digital advertising spend and online subscriptions as a source of revenue and to substitute revenues lost from print circulations. However, as described at Section 6, digital platforms possess substantial market power in the supply of digital advertising and engage in practices that foreclose competition from publishers. As a result, publishers have not been able to offset the significant decline in print advertising revenue with digital advertising. PwC predicts this trend to continue and for the industry to remain in overall recession.²⁶⁷

²⁶⁵ Mary Meeker, Internet Trends 2017, Code Conference, 31 May 2017, <<http://www.kpcb.com/internet-trends>>, page 15

²⁶⁶ eMarketer, Google and Facebook Tighten Grip on US Digital Ad Market, eMarketer, 21 September 2017 <<https://www.emarketer.com/Article/Google-Facebook-Tighten-Grip-on-US-Digital-Ad-Market/1016494>>

²⁶⁷ PwC, Global entertainment and media outlook 2016-2020, June 2016

Figure 46: Advertising revenue for Australian newspapers – print and digital (AUD\$ millions)



Source: PwC, Global entertainment and media outlook 2016-2020. Data is at average 2015 exchange rates.

3.29 Have innovation and technological change increased or decreased competition in the media and advertising services markets?

Competition in advertising service markets has declined as a result of the technological changes to the industry. Google and Facebook dominate the advertising services supply chain and represent unavoidable trading partners of publishers. As described in more detail at Section 6, this has resulted in reduced choice and higher prices for advertisers.

While there appears to be significantly more sources of news on the internet, there has been a substantial reduction in the publication of valuable and original content. While there remains intense competition between those publishers for audience share, it is supported by less revenue and publishers are under intense structural pressure.

3.30 Have the markets that digital platforms operate in changed over time and are they likely to change further in the future? For example, to what extent can digital platforms now be considered to be publishers rather than distributors of content, and is this likely to evolve in the future?

As described in Section 4 above, in an effort to retain users within their own platforms, Google, Facebook and Apple are presenting consumers with increasing amounts of news content, including full content articles. By standing between publishers and consumers, digital platforms decide what content consumers have access to, how the content is presented and how it is prioritised on their platform. As described earlier, in October 2016, Facebook announced that it would no longer censor graphic material that is "newsworthy, significant, or important to the public interest — even if they might otherwise violate our standards". The determination of what content meets this criteria lies with Facebook. It appears that CEO, Mark Zuckerberg, has the final say on which content will be removed from Facebook. For instance, during the US elections, Mr Zuckerberg decided not to remove posts by Donald Trump

about banning Muslims from entering the US, despite the fact that they violated the company's rules barring hate speech.²⁶⁸

The digital platforms say they feel responsible for the content on their platforms, but they have fought long and hard to maintain – and expand – safe harbour protections in the US for content on their platforms (s 230 of the Communications Decency Act 1996) and for infringing copyright material on their platforms (s 512 of the Digital Millennium Copyright Act 1996). These 20 year-old laws entrench the dominance of the platforms and contribute to the uneven commercial playing field experienced by content creators including publishers. Australian lawmakers can learn from these examples and not perpetuate outdated laws, regulations and policies.

Digital platforms are also becoming acquirers of video content. Facebook and Twitter are already purchasing content directly from rights holders for distribution on their platforms. Facebook is significantly expanding its content capabilities and is expected to become a major streaming service in the future. For instance, Facebook will launch a video platform Facebook Watch in 2018 and is already bidding for content rights. In March 2018, Facebook reportedly paid between US\$30 million and US\$35 million for exclusive streaming rights to 25 Major League Baseball (MLB) weekday afternoon games.²⁶⁹ According to Bloomberg, highlight packages for every regular season game and club-specific recap packages produced by the MLB will also be available on Facebook Watch. Prior to that, in September 2017, Facebook placed an unsuccessful bid of US\$610 million to stream five years of games from the Indian Premier League cricket. In March 2018, Facebook paid around US\$30-\$35 million to the Major League Baseball to stream 25 afternoon games. Twitter has also entered into a number of partnerships to live stream sports events, including AFL, cricket and tennis.

3.31 How are the business models for news and journalism likely to evolve over the next decade and how sustainable is the commercial provision of high quality news in Australia? Do you have any other comments or observations on the impact of digital platforms or on the state of competition in the media and advertising services markets?

Publishers of news and journalism are experiencing significant and widespread challenges:

- Increased intermediation by digital platforms regarding the allocation of traffic, including through coercive arrangements to present 'free' content (e.g. FCF and AMP), branded news aggregation services (e.g. Google News, Facebook Instant Articles and Apple News), controlling subscription channels (e.g. Subscribe with Google and Apple App Store) and increasing the size of scraped snippets (e.g. Google search) so that readers can scan articles from within the platform;
- Increased intermediation by digital platforms in advertising, including digital platforms' control over the programmatic advertising supply chain;

²⁶⁸ Deepa Seetharaman, Zuckerberg Defends Facebook Against Charges It Harmed Political Discourse, The Wall Street Journal, 10 November 2016 <<https://www.wsj.com/articles/zuckerberg-defends-facebook-against-charges-it-harmed-political-discourse-1478833876>>

²⁶⁹ Scott Soshnick, Facebook Signs Exclusive Deal to Stream 25 MLB Games, Bloomberg, 10 March 2018 <<https://www.bloomberg.com/news/articles/2018-03-09/facebook-says-play-ball-in-exclusive-deal-to-stream-25-mlb-games>>

- Lack of access to our customers’ data that is held by the platforms, which could enable publishers to better tailor news content to reader preferences and to market online advertising opportunities;
- Lack of transparency about algorithms including how they work; and
- Lack of a level commercial playing field.

3.32 Attachment B summarises the key existing regulation in Australia that applies to the media and advertising services markets. Are there any additional existing or proposed laws or regulations in Australia which should be taken into account by the ACCC in this inquiry?

We agree that Attachment B contains the key laws and regulations that apply to the media and advertising markets. In addition to these specific laws, publishers such as News Corp Australia, must comply with general laws including the Corporations Act 2001 (Cth) and criminal legislation in the Commonwealth and each state and territory, as well as a vast range of Commonwealth laws relating to national security.

3.33 How do existing laws and regulations apply to the conduct of digital platforms? For example:

- are digital platforms required to verify news and journalistic content before distributing it?
 - do intellectual property and copyright laws apply to the conduct of digital platforms in a similar way as to other market participants?
- If these laws and regulations do not apply to digital platforms, what are the implications for competition in the media and advertising services markets and how does this impact the quality and choice of news and journalistic content for consumers?**

Digital platforms like Google and Facebook are not required to verify news and journalistic content before distributing it. However, these platforms can be held liable for unlawful content uploaded to their platforms, even if the platforms themselves played no role in the creation of that content.

1 Defamation

Under defamation law, digital platforms may be considered secondary publishers of content uploaded by users of the platform.

In Victoria, the Supreme Court of Victoria found Google liable for the publication of defamatory material in the form of automated search results that associated the plaintiff's name with the names and images of criminal figures.²⁷⁰ Google was found to have consented to the publication from the time at which it was put on notice of the defamatory material and failed to stop its publication. A secondary publisher, such as Google, may rely on the defence of innocent dissemination, however, it must demonstrate that it did not know, nor should it reasonably have known, that the matter was defamatory.

²⁷⁰ *Trkulja v Google Inc LLC & Anor (No 5)* [2012] VSC 533

In New South Wales, the Supreme Court ordered an injunction against Twitter, which required Twitter to remove 'tweets' containing confidential information about a company.²⁷¹ After being notified of the offending tweets, Twitter had agreed to take some, but not all of the tweets down. The Supreme Court ordered Twitter to remove the offending tweets, refrain from publishing the tweets and disclose identifying information about the user who had posted the tweets. Although Twitter argued that it was not feasible for it to proactively monitor user-generated tweets for offending material, the Court considered that it was not unreasonable to impose a requirement of 'some degree of filtering or checking'.

2 Contempt

Journalistic content published on digital platforms is also subject to contempt laws in the same way as traditional media. In *DPP v Johnson & Yahoo!7*,²⁷² Yahoo!7 was found liable for contempt of court, after a journalist uploaded an article to the Yahoo!7 website that contained prejudicial information about a defendant in criminal proceedings and resulted in the discharge of a jury. The Supreme Court of Victoria noted in the judgment that social media has become significantly more prominent as a news source and that in addition to the initial publication of the article on the Yahoo!7 website, the article could have been further disseminated over social media, increasing the risk of exposure of the offending material to jurors.

3 Copyright

The Copyright Act 1968 (Cth) also applies to the conduct of digital platforms in a similar way to other market participants, however, there are differences in the way in which digital platforms may be found liable, compared to traditional publishers

A digital platform may be found primarily liable for copyright infringement if:

- it uploads infringing content to the platform; or
- a user uploads infringing content to the platform, in circumstances where the platform is found to be 'the person responsible for determining the content of the [infringing] communication'.²⁷³

A digital platform's secondary liability for copyright infringement may arise in one of two ways:

- 1 Joint tortfeasorship: joint tortfeasorship requires demonstrating a 'common design' between the digital platform and the user to commit acts of copyright infringement and that the platform acted in furtherance of that design. It will be insufficient if the digital platform merely facilitates the infringement by providing the platform.
- 2 Authorisation: In considering authorisation under the Copyright Act, the court will consider
 - (a) the extent (if any) of the digital platform's power to prevent the infringement;
 - (b) the nature of any relationship existing between the digital platform and the infringer;and

²⁷¹ [2017] NSWSC 1300

²⁷² [2016] VSC 699

²⁷³ *Copyright Act 1968* (Cth) s 22(6)

- (c) whether the digital platform took any reasonable steps to prevent or avoid the infringement.

It may be more difficult for a copyright owner to make out a case of copyright infringement against a digital platform, as compared to a traditional market participant, due to the applicability of the law, particularly in 2(a) to (c) above.

A robust copyright framework is essential to ensure content creators, including those of news and journalism, are able to enforce their rights. However, as a result of significant pressure from the digital platforms, Australia's copyright laws are more at risk of being watered down. For example, the digital platforms are proponents of:

- Extending the copyright safe harbour provisions to service providers including commercial entities – which was never the intention of the provision; and
- Introducing a broad 'fair use' exception into Australian copyright law.

Rights-holders, including News Corp Australia, do not support such proposals. We believe, however, that Australia's copyright law should be fit-for-purpose in the digital environment – there needs to be appropriate incentives on content creators as well as the ability for content creators to enforce their rights.

In this regard, we support the Government's current proposed safe harbour amendment. We also see opportunities for the Government to turn its mind to matters the subject of previous and current consultation to ensure these operate as intended and are fit for the digital environment, such as the secondary liability / authorisation provisions (ss 36 and 101 Copyright Act) and the Federal Court's power to order an injunction on internet service providers blocking online access to infringing material (s 115A Copyright Act).

3.34 Should digital platforms be subject to the same laws and regulations as other market participants in the media and advertising services markets (e.g. news and journalistic content creators or distributors)?

There should be a level commercial playing field between digital platforms and publishers. We are strongly of the view that the cross-media and ownership rules and the anti-siphoning laws are anachronistic in the digital age and are hampering publishers from competing and innovating, particularly:

1 Cross media and ownership rules

We welcomed the abolition of the out-dated 75 percent audience reach rule and the 2 out of 3 cross-ownership rule as part of the Government's media reform package in September 2017. However, as the ACCC will be aware, News Corp Australia has long held the view and continues to hold the view – that the remaining three cross media and ownership laws should also be removed. These are:

- 5/4 media diversity rule - there must be at least five media voices in metropolitan license areas and 4 media voices in regional license areas. Where there are already less than the relevant minimum number of voices then that number cannot be reduced further;²⁷⁴

²⁷⁴ Broadcasting Services Act 1992 (Cth), s 61AB

- One television license rule – a person, either in their own right or as a director of one or more companies, must not be in a position to exercise control of more than one commercial television broadcasting license in a license area;²⁷⁵
- Two radio license rule – a person, either in their own right or as a director of one or more companies, must not be in a position to exercise control of more than two commercial radio broadcasting licenses in a license area.²⁷⁶

The removal of these out-dated laws is particularly pressing in the face of the dominance of digital platforms such as Google, Facebook and Apple.

2 Anti-siphoning laws

The Productivity Commission undertook a review of the Broadcasting Services Act 1992 (Cth) in 2000. That review unequivocally found that the anti-siphoning regime in Australia was anti-competitive. With the landscape looking significantly different in 2018 and beyond, significant reform of the scheme is long overdue. To ensure a level playing field we consider it appropriate for the scheme to be abolished.

3 Other jurisdictions and activities to consider

We also note that in other jurisdictions, various inquiries have sought to better understand how digital platforms can be regulated to level the playing field, and some initiatives have attempted to do this. These include:

- The **European Union** Commission is currently considering a proposal for the *Copyright in the Digital Single Market Directive*, launched in in 2016.²⁷⁷ Under the directive, publishers of journalistic content would be granted a 20 year exclusive right to allow or restrict the distribution of their publications (including articles, photographs, design or editorial work). At present, only the journalist has automatic copyright under EU law. Contracts between publishers and journalists usually provide that a journalist delegates that right to their employer, who then represents them in copyright cases however it is difficult and time consuming for publishers to prove this right of transfer in courts. The directive would potentially allow publishing houses to block news aggregators like Google News more efficiently from publishing snippets of their publications without consent and obtain proper remuneration from advertisers. It is hoped this will allow publishers to negotiate more favourable financial terms with digital platforms.²⁷⁸
- In May 2018, the *EU General Data Protection Regulation* (GDPR) comes into force in the **European Union**. The GDPR imposes broad new rules relating to data privacy in the EU. Though these rules apply to all online providers who collect any data, it is expected to impact Google and Facebook the most, given their dominance in the data-collection space and the importance

²⁷⁵ Broadcasting Services Act 1992 (Cth), s 53

²⁷⁶ Broadcasting Services Act 1992 (Cth), s 54

²⁷⁷ European Commission, Proposal for a Directive of the European and of the Council on copyright in the Digital Single Market, European Commission, 14 September 2016 <<https://ec.europa.eu/digital-single-market/en/news/proposal-directive-european-parliament-and-council-copyright-digital-single-market>>

²⁷⁸ Klara Votavova and Jakub Janda, Making online platforms responsible for news content, European Values, 25 July 2017 <<http://www.europeanvalues.net/wp-content/uploads/2017/07/Making-online-platforms-responsible-for-news-content-3.pdf>>

this data has for their ability to monetise their services. In particular, the GDPR imposes a 'purpose limitation' principle, which requires that personal data only be collected for 'specific, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes.'²⁷⁹ This means any data collected online cannot be used for advertising purposes without explicit user permission.²⁸⁰ This is expected to have far reaching implications for Google's Ad Tech stack, especially for targeted advertising through products like AdWords and DoubleClick.

- In March 2018, the **United States** Federal Election Commission agreed to develop rules for online ads, in the wake of the scandal surrounding Russian interests purchasing content on Facebook and other platforms in order to wield influence over the 2016 election. Although these rules are yet to be developed, their broad purpose would be to require ads run online or in mobile apps to identify any sponsors.²⁸¹ This increase in transparency is likely to make such content far less persuasive for users, and therefore reduce its monetary value for advertisers.
- In the **United States**, the President of CNN (Jeff Zucker) recently called on the US government to regulate Google and Facebook's distribution of news content, citing their dominance as the 'biggest issue facing the growth of journalism in the years ahead.'²⁸²
- **Germany's** antitrust authority, the Bundeskartellamt, announced the launch of an inquiry into online advertising in February 2018. This was accompanied by the release of a paper titled *Competition and Consumer Protection in the Digital Economy – Online Advertising* which provides background to the inquiry, and its scope.²⁸³ It identifies myriad concerns the German authority has relating to Google and Facebook's dominance.
- In March 2018, **France's** competition authority released a report which concluded Google and Facebook dominate the French online advertising market. The report noted the fact that the companies act as publishers and intermediaries, giving them a competitive advantage and making it difficult for others to enter the market. The French competition authority has indicated that in the wake of the report, they may launch an official inquiry in the next few months.²⁸⁴

²⁷⁹ European Union, General Data Protection Regulation (Regulation (EU) 2016/679), Article 5, paragraph 1(b)

²⁸⁰ Dr Johnny Ryan, How the GDPR will disrupt Google and Facebook, Page Fair, 30 August 2017, <https://pagefair.com/blog/2017/gdpr_risk_to_the_duopoly/>

²⁸¹ Fredreka Schouten, Facebook, Google may face new rules for political ads, as US grapples with foreign influence, USA Today, 14 March 2018 <<https://www.usatoday.com/story/news/politics/2018/03/14/facebook-google-face-new-rules-political-ads-u-s-grapples-foreign-influence/423846002/>>

²⁸² Jennifer Faull, CNN president to government: 'regulate Google and Facebook or our industry dies', 26 February 2018 <<http://www.thedrum.com/news/2018/02/26/cnn-president-government-regulate-google-and-facebook-or-our-industry-dies>>

²⁸³ Silke Heinz, Bundeskartellamt launches sector inquiry into online advertising, Wolters Kluwer, 9 March 2018 <<http://competitionlawblog.kluwercompetitionlaw.com/2018/03/09/bundeskartellamt-launches-sector-inquiry-online-advertising/>>

²⁸⁴ Reuters, France's competition authority to open investigation into Google and Facebook for online ad dominance, Tech 2, 6 March 2018 <<https://www.firstpost.com/tech/news-analysis/frances-competition-authority-to-open-investigation-into-google-and-facebook-for-online-ad-dominance-4379251.html>>

- Together, competition authorities in France and Germany produced a report in 2016 titled *Competition Law and Data*.²⁸⁵ The report made a number of findings about anticompetitive practices by the platforms. In particular, the report was critical of data strategies including preventing rivals from accessing data through exclusivity provisions with third party providers; foreclosing opportunities for rivals to procure similar data by making it difficult for consumers to switch; and perpetuating data exclusivity by tying access to data to the use of other services such as analytics software.

3.35 What steps have been taken by digital platforms to address any competition and consumer concerns that have been raised (e.g. self-regulatory codes or guidelines). To what extent have these initiatives addressed concerns?

We observe that steps taken by digital platforms are usually in response to regulatory and/or public pressure. Many of these reactionary changes have been too late to effect meaningful change. The changes that are made— while purportedly for the benefit of another party — tend to be self-serving.

For example, consider the following Google initiatives discussed at Section 4 of this submission:

- **FCF** – Google finally removed its FCF policy in late 2017 after over eight years of criticism by news industry groups about the anti-competitive effects of this policy. While the removal of the FCF policy has allowed publishers to convert more subscribers, the most significant damage is irreversible – the expectation consumers now have that they should no longer pay for news content.
- **AMP** – one of the anti-competitive features of Google's AMP initiative is that it uses non-standard web technology, with pages housed on Google's servers, rather than on the servers of the original publishers of the content. On 8 March 2018, Google announced that it was working on web standards that will allow instant loading for non-AMP web content. The announcement was, however, made two years after Google announced its AMP project. While the effect of the change is yet to be seen, especially on consumer data collected by Google, it is likely that the many publishers that have already invested in creating Google-sourced AMP pages (including software development and staff training costs) will be hesitant to switch to an alternative provider, particularly as non-AMP web content may be ranked differently by the search algorithm.
- **Ad blocking** – Google's recent decision to block all ads in Google Chrome which do not comply with the Coalition for Better Ad Standards perpetuates the uneven playing field between Google and publishers. In particular, while Google is holding competitor advertising platforms to the standards, they do not apply to video content sites, such as YouTube.

Similarly, Facebook's efforts to address concerns have essentially been reactionary, following public controversies over its conduct. In particular, Facebook has belatedly made changes to its data collection policies in the wake of the US elections and Russia interference on the platform, including the proliferation of fake news, and the more recent controversy resulting from Cambridge Analytica.

²⁸⁵ Bundeskartellamt and Autorite de la concurrence, *Competition Law and Data*, 10 May 2016
http://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Berichte/Big%20Data%20Papier.pdf?__blob=publicationFile&v=2

We leave descriptions of other initiatives taken to address competition and consumer concerns to the platforms.

3.36 Are the existing laws and regulations sufficient to address the activities of digital platforms? Is there a case for the specific regulation of digital platforms and, if so, what issues would proposed regulation seek to address?

The purpose of this submission is to highlight concerns with the practices of digital platforms and their impact on competition and consumer welfare. In terms of whether future regulation is required, News Corp Australia has not formed a final view. Current laws *may* be sufficient to deal with our concerns. However, it may also be the case that some further legislative, regulatory and/or policy intervention or changes are required to address the negative impacts of the platforms on news and journalism, such as establishing an Algorithm Review Board to analyse and remedy algorithmic distortions of competition and designate the digital platforms as publishers/broadcasters to remove their incentives to distribute lower quality content. News Corp Australia would be happy to engage with the ACCC and other stakeholders on this issue as the Inquiry progresses.

Annexure 1: Summary of Initiatives Related to Google and Facebook Overseas

Jurisdiction	Case / Investigation	Overview
EU	European Commission Investigation into Android (ongoing)	<p>Opened investigation in April 2015.²⁸⁶</p> <p>Majority of smartphones use the Android OS in combination with Google applications and services. To obtain the right to install these applications and services on an Android device, manufacturers must enter certain agreements with Google.</p> <p>The EC is carrying out a formal investigation to assess if conditions in Google's agreements associated with the use of Android and Google's proprietary applications and services breach EU antitrust laws.</p> <p>Preliminary view issued in April 2016 by the EC was that Google has abused its dominant position by imposing restrictions on Android device manufacturers and mobile network operators.²⁸⁷</p> <p>Final view expected during 2018.</p>
	European Commission Investigation into AdSense (ongoing)	<p>One aspect of the investigation opened in November 2010.²⁸⁸</p> <p>Allegations to be investigated include restrictions Google imposes on the portability of online advertising campaign data to competing advertising platforms.</p> <p>Preliminary view issued in July 2016 by the EC was that Google has abused its dominant position by artificially restricting the possibility of third party websites to display search advertisements from Google's competitors over a period of ten years.²⁸⁹ Specific conditions of concern to the EC were:</p> <p>Exclusivity – requiring third parties not to source search ads from Google's competitors, later replaced by a requirement that third parties obtain Google's approval before making any change to the display of competing search ads.</p> <p>Premium placement of a minimum number of Google search ads – requiring third parties to take a minimum number of search ads</p>

²⁸⁶ European Commission Press Release Database, Antitrust: Commission opens formal investigation against Google in relation to Android mobile operating system, 15 April 2015 <http://europa.eu/rapid/press-release_MEMO-15-4782_en.htm>

²⁸⁷ European Commission Press Release Database, Antitrust: Commission sends Statement of Objections to Google on Android operating system and applications, 20 April 2016 <http://europa.eu/rapid/press-release_IP-16-1492_en.htm>

²⁸⁸ European Commission Press Release Database, Antitrust: Commission probes allegations of antitrust violations by Google, 30 November 2010 <http://europa.eu/rapid/press-release_IP-10-1624_en.htm>

²⁸⁹ European Commission Press Release Database, 'Antitrust: Commission takes further steps in investigations alleging Google's comparison shopping and advertising-related practices breach EU rules' 14 July 2016 <http://europa.eu/rapid/press-release_IP-16-2532_en.htm>

		<p>from Google and reserve the most prominent space on their search result pages to Google search ads. In addition, competing search ads cannot be placed above or next to Google search ads.</p> <p>Final view expected in 2018.</p>
	<p>European Commission consultation on Fairness in platform-to-business (P2B) relations</p>	<p>The EU Directorate General for Communications Networks, Content and Technology is preparing a first draft regulation on Fairness in platform-to-business relations. The regulation was originally intended to focus on marketplaces (such as ability for platforms to change terms unilaterally without notice), but the EC is now considering whether search engines (Google) could also be included.</p> <p>Consultation took place in late 2017 and a decision by the EC on whether a specific EU platform regulation proposal will be introduced is expected in the first half of 2018.</p> <p>Part of the wider EC Digital Single Market (DSM) strategy.</p>
	<p>European Commission enforcement action on social media platforms and consumer law</p>	<p>Launched in November 2016; results announced in February 2018.²⁹⁰</p> <p>Requests were made in March 2017 for social media companies to align their terms of service with EU consumer protection rules.</p> <p>Google +'s appeared to be in line with the requests, but Facebook and Twitter were singled out for their lack of liability, lack of clarity on what constitutes commercial communications, lack of information on content removal or contract termination and for submitting their users to California law.</p> <p>With the announcement of these results, the EC indicated they would monitor changes, focus on the removal of illegal content, and publish a 'New Deal for Consumers' (new consumer laws) sometime in April 2018.</p>
	<p>European Commission decision against Google Shopping</p>	<p>The EC found that Google is dominant in general internet search markets throughout the EEA and abused that market dominance by giving its own comparison shopping service an artificial advantage in results.²⁹¹</p> <p>Google was fined €2.42 billion in 2017; the decision is currently under appeal by Google.</p> <p>Meanwhile, the remedy offered by Google relating to Google Shopping is being investigated by the EU and may be deemed insufficient.</p>

²⁹⁰ European Commission Press Release Database, 'Antitrust: Commission takes further steps in investigations alleging Google's comparison shopping and advertising-related practices breach EU rules' 14 July 2016 <http://europa.eu/rapid/press-release_IP-16-2532_en.htm>

²⁹¹ European Commission Press Release Database, 'Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service' 27 June 2017 <http://europa.eu/rapid/press-release_IP-17-1784_en.htm>

	<p>European Commission decision against Facebook for providing misleading or incorrect information</p>	<p>Decision handed down in May 2017.²⁹²</p> <p>The EC found Facebook provided misleading or incorrect information during a 2014 merger review of Facebook and WhatsApp.</p> <p>During the merger review, Facebook claimed it could not routinely match Facebook and WhatsApp user accounts but started doing so in 2016, allowing them to combine user data across services. The EC found that Facebook staff were aware of the ability to combine datasets at the time of the merger review.</p> <p>Facebook was fined €110 million.</p>
<p>United Kingdom</p>	<p>Department for Digital, Culture, Media and Sport Fake News Inquiry (ongoing)</p>	<p>House of Common's Digital, Culture, Media and Sport Committee investigation into fake news in the UK.²⁹³</p> <p>Solicited evidence in the US on 8 February 2018.</p> <p>Questioning of Google, Facebook and Twitter representatives. Members of the Select Committee expressed criticism of the platforms.</p> <p>Inquiry is mainly aimed at investigating the influence of fake news from Russia during the EU referendum campaign in 2016, but extends to broader issues including platforms' role as publishers, data collection, accountability and potential reform.</p>
	<p>Department for Digital, Culture, Media and Sport review into the future of high quality national and local papers in the UK (ongoing)</p>	<p>Announced in February 2018.²⁹⁴</p> <p>The review will look at the sustainability of the national, regional and local press, how content creators are rewarded for content creations, and how policymakers can ensure that the UK has a vibrant, independent and plural free press.</p>
	<p>Competition and Markets Authority report on the commercial use of consumer data</p>	<p>Report published in June 2015 on the collection and use of consumer data.²⁹⁵</p> <p>No formal investigation has been opened since the publication of the report, however pressure continues to build and it is anticipated a formal investigation may eventually arise from the report.</p>

²⁹² European Commission Press Release Database, 'Mergers: Commission fines Facebook €110 million for providing misleading information about WhatsApp takeover' 18 May 2017 <http://europa.eu/rapid/press-release_IP-17-1369_en.htm>

²⁹³ House of Commons Digital, Culture, Media and Sport Committee, Oral evidence - Fake News, 8 February 2018

²⁹⁴ UK Government Press Releases, News review launched of press sustainability in the UK, 6 February 2018 <<https://www.gov.uk/government/news/new-review-launched-of-press-sustainability-in-the-uk>>

²⁹⁵ UK Government Press Releases, 'CMA publishes findings on the commercial use of consumer data' 17 June 2015 <<https://www.gov.uk/government/news/cma-publishes-findings-on-the-commercial-use-of-consumer-data>>

<p>United States</p>	<p>Federal Trade Commission Nominations</p>	<p>In February 2018, the Senate Commerce Committee held joint nomination hearings for four individuals nominated by President Trump to serve on the FTC.</p> <p>Republican Senators John Thune and Ted Cruz asked pointed questions about the dominance of digital platforms.</p> <p>All four expressed willingness to investigate big tech firms if they use power inappropriately.²⁹⁶</p> <p>The Committee is still awaiting the fifth commissioner's paperwork to be submitted before taking any votes on the nominations.</p>
	<p>SESTA</p>	<p>On 21 March 2018, the Senate passed SESTA, the Stop Enabling Sex Traffickers Act of 2017.²⁹⁷</p> <p>The Act opens the digital platform 'safe harbor' that shields platforms from liability for third party content.</p>
	<p>Federal Trade Commission Facebook Investigation (ongoing)</p>	<p>The FTC confirmed in March 2018 that it is conducting a non-public investigation into practices of Facebook relating to privacy and data security requirements.²⁹⁸</p>
	<p>Federal Trade Commission Android Investigation (reportedly ongoing)</p>	<p>There are reports that the licencing agreements used by Google's Android OS are under investigation by the FTC. However, the investigation is not public and the FTC has not officially confirmed the investigation or laid any charges.²⁹⁹</p>
	<p>Missouri State Attorney General investigation into Google's antitrust and consumer protection practices (ongoing)</p>	<p>In November 2017, the Attorney General announced an investigation into Google's antitrust and consumer protection practices.³⁰⁰</p> <p>Civil Investigative Demands issued to Google focused on 'content scraping' and misappropriation of online content from online competitors, and 'search manipulation' to preference websites owned by Google.</p>

²⁹⁶ CNBC, FTC commissioner nominees open to investigating tech companies, 14 February 2018 <<https://www.cnbc.com/2018/02/14/ftc-commissioner-nominees-open-to-investigating-tech-companies.html>>

²⁹⁷ The Verge, Senate passes controversial anti-sex trafficking bill, 21 March 2018 <<https://www.theverge.com/2018/3/21/17147688/senate-sesta-fosta-vote-anti-sex-trafficking>>

²⁹⁸ FTC Press Releases, Statement by the Acting Director of FTC's Bureau of Consumer Protection regarding reported concerns about Facebook privacy practices, 26 March 2018 <<https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection>>

²⁹⁹ IT Pro Portal, 'Everything you need to know about the FTC's Android investigation' 27 September 2015 <<https://www.itproportal.com/2015/09/27/everything-need-know-about-ftcs-android-investigation/>>

³⁰⁰ Daisuke Wakabayashi, Missouri opens antitrust investigation into Google, The New York Times, 13 November 2017 <<https://www.nytimes.com/2017/11/13/technology/missouri-google-investigation.html>>

	<p>Mississippi State Attorney General investigation and subsequent lawsuit (ongoing)</p>	<p>In 2014, the Attorney General subpoenaed Google seeking information about how they handle links to counterfeit goods, illegal prescription drugs and copyright violations.</p> <p>Google sued to block the investigation relying on the Communications Decency Act s 230 (safe harbor provision).</p> <p>Two years later both sides publicly agreed to work together to resolve the issue.³⁰¹</p> <p>Subsequently, in January 2017, the Attorney General filed another lawsuit claiming Google is gathering personal data on students using Google's education tools.³⁰²</p> <p>In November 2017, the Attorney General launched another investigation, this time into whether Google scrapes information without permission from players such as Yelp Inc. to use for its own search results, and is questioning Google's collection, use and disclosure of information about users and their online activity.³⁰³ The investigation is continuing.³⁰⁴</p>
	<p>Federal Trade Commission Search Bias Investigation</p>	<p>In 2013, the FTC conducted an extensive investigation into allegations that Google had manipulated its search algorithms to harm competitors and promote its own competing vertical products or 'search bias'.</p> <p>The investigation was controversially closed in January 2013 when the FTC declared that even though the changes to Google's algorithm could have harmed competitors, it could be justified as innovations that improved Google's products and user experiences.³⁰⁵</p> <p>In March 2014, <i>The Wall Street Journal</i> broke the story that a FTC staff memo had recommended the FTC bring a lawsuit against</p>

³⁰¹ Google Inc. v Jim Hood, Attorney General of the State of Mississippi in his official capacity (filed 13 July 2016) <https://cdn.arstechnica.net/wp-content/uploads/2016/07/Google.Hood_.dismissal.pdf>

³⁰² The State of Mississippi, ex rel., Jim Hood, Attorney General for the State of Mississippi v Google Inc., filed 13 January 2017 <http://www.ago.state.ms.us/wp-content/uploads/2017/01/Complaint_google.pdf>

³⁰³ Gerrit De Vynck, Missouri AG announces antitrust investigation into Google, Bloomberg Technology, 14 November 2017 <<https://www.bloomberg.com/news/articles/2017-11-13/google-faces-missouri-investigation-as-antitrust-concerns-grow>>

³⁰⁴ Harold Gater, Mississippi Attorney General investigating Facebook user privacy practices, Clarion Ledger, 26 March 2018 <<https://www.clarionledger.com/story/news/2018/03/26/mississippi-attorney-general-investigating-facebook-user-privacy-practices/459678002/>>

³⁰⁵ Charles Arthur, Google cleared of search results bias after two-year US investigation, The Guardian, 5 January 2013 <<https://www.theguardian.com/technology/2013/jan/03/google-cleared-search-bias-investigation>>

		Google, but the staff recommendation was ultimately ignored and the case closed. ³⁰⁶
Germany	New Government Coalition Reform (anticipated)	<p>In February 2018, the new coalition government in Germany announced plans to modernise competition law relating to the digitalisation of the business world.³⁰⁷</p> <p>Under the proposed reforms, online platforms would face stricter controls and scrutiny from authorities.</p> <p>This comes after the German government passed legislation in 2017 which requires certain platforms, including Facebook, to take greater responsibility for illegal and harmful conduct users undertake on their site.³⁰⁸</p>
	Bundeskartellamt sector inquiry into the online advertising sector (ongoing)	<p>In February 2018, Germany's antitrust authority launched a sector inquiry into online advertising.³⁰⁹</p> <p>This was accompanied by publication of a paper titled 'Competition and Consumer Protection in the Digital Economy: Online Advertising'.³¹⁰</p> <p>The inquiry follows the preliminary view expressed by the Bundeskartellamt in December 2017 (below) that Facebook has abused its dominant position in the collection and use of personal data.</p>
	Bundeskartellamt preliminary assessment against Facebook for data usage	In December 2017, Germany's antitrust authority, the Bundeskartellamt, issued a preliminary finding that Facebook abused its dominant position in social media to collect and use personal data. ³¹¹

³⁰⁶ Broky Mullins, Rolfe Winkler and Brent Kendall, Inside the U.S. Antitrust Probe of Google, The Wall Street Journal, 19 March 2015 <<https://www.wsj.com/articles/inside-the-u-s-antitrust-probe-of-google-1426793274>>

³⁰⁷ Lexology, Competition Law 4.0 – The plans of the future German government, Lexology, 8 February 2018 <<https://www.lexology.com/library/detail.aspx?g=02a45a76-05d3-46ad-bfd8-27673e41d8ea>>

³⁰⁸ Cathleen Berger, Content and platform regulation: The German case and what's to come in 2018, Medium, 30 December 2017 <https://medium.com/@_cberger_/will-germanys-approach-to-content-and-platform-regulation-prevail-in-2018-d7e6e2db5cb>

³⁰⁹ The Bundeskartellamt, 'Bundeskartellamt launches sector inquiry into market conditions in online advertising sector' 1 February 2018 <http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2018/01_02_2018_SU_Online_Werbung.html>

³¹⁰ The Bundeskartellamt, 'Competition and Consumer Protection in the Digital Economy: Online Advertising' February 2018 <http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_III.pdf?__blob=publicationFile&v=5>

³¹¹ Reuters, 'Facebook abused dominant position, says German watchdog' 19 December 2017 <<https://www.reuters.com/article/us-facebook-germany-dataprotection/facebook-abused-dominant-position-says-german-watchdog-idUSKBN1ED10J>>

	Joint report 'Competition Law and Data' with the French Competition Authority	Report looks at the implications and challenges for competition authorities resulting from data collection in the digital economy and other industries. ³¹² Published in May 2016.
France	Joint report 'Competition Law and Data' with the Bundeskartellamt	As above.
Belgium		In February 2018, a Belgian court upheld charges brought by Belgium's privacy watchdog against Facebook, claiming it had illegally gathered data from Belgian citizens who were not Facebook users, including on third party websites. ³¹³ The court ordered Facebook to delete all the data it gathered illegally and to stop tracking people without their consent (or pay a daily fine).
The Netherlands	Dutch Competition Authority report 'Big Platforms, Big Problems?'	In September 2016, the Dutch Competition Authority published a report on 'Big Platforms, Big Problems?' looking into digital platforms that stream videos, taking into account not just the companies themselves but also connected businesses such as media agencies, digital marketplaces where advertisement space is sold and bought, and producers of content. ³¹⁴ This paper looked into whether, data can be a source of market power and whether access to data is inextricably linked to privacy issues. This report found that data is critical for competing successfully in the digital market, but (depending on the type of data) does not necessarily lead to market power. The report also noted a potential link between market power and privacy, noting however that while consumers may be influenced by privacy considerations when choosing a platform, this is not always the case since consumers do not necessarily pay much attention to their own privacy online.

³¹² Bundeskartellamt, The French Autorité de la concurrence and the German Bundeskartellamt publish joint paper on data and its implications for Competition Law, 10 May 2016, <http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2016/10_05_2016_Big%20Data%20Papier.html>

³¹³ Reuters, Facebook loses Belgian privacy case, faces fines of up to \$125 million, 17 February 2018, <<https://www.reuters.com/article/us-facebook-belgium/facebook-loses-belgian-privacy-case-faces-fine-of-up-to-125-million-idUSKCN1G01LG>>

³¹⁴ Koen Platteau, Dutch competition authority takes a closer look at online video platforms, Simmons & Simmons Elexica 29 September 2016 <<http://www.elexica.com/en/legal-topics/antitrust-and-merger-control/29-dutch-competition-authority-takes-a-closer-look-at-online-video-platforms>>

The OECD	OECD Report 'Big data: Bringing competition policy to the digital era'	<p>In November 2016, the OECD published a report called 'Big data: Bringing competition policy to the digital era'.³¹⁵</p> <p>In the report, the OECD's recognised the importance of data and its potential role in enhancing market power, locking in consumers and raising barriers to entry.</p>
Italy	Joint market inquiry into Big data	<p>In May 2017, the Italian Competition Authority, together with the Italian Data Protection Authority and the Communications Authority, opened a joint market investigation on 'big data' and the strategies platforms use to collect that data.³¹⁶</p> <p>The inquiry looked into potential competition and consumer protection concerns, data privacy and information pluralism.</p> <p>The Italian Competition Authority also launched investigations against Facebook Inc. over alleged unfair commercial practices on April 6, 2018.³¹⁷</p>
Israel	New Investigation into misuse of market power (anticipated)	<p>In January 2018, the head of Israel's Antitrust Authority, prompted by a parliamentary committee, said they will examine the business practices of Facebook or Google to determine whether they are violating the country's antitrust laws by misusing their market power to foreclose competitors.³¹⁸</p>
India	Investigation into Google's paid search results practices	<p>On 8 February 2018, the Competition Commission of India (CCI) concluded a three-year investigation into Google's paid search results. The CCI found that Google was leveraging its dominance in both online general web search and search advertising services. The CCI imposed a fine of US\$21 million (5 percent of Google's average total revenue from India operations in the last three years).³¹⁹</p>
Brazil	Investigations into Google's anticompetitive practices (ongoing)	<p>In 2013, Brazil's antitrust authority (CADE) opened three investigations into Google's practices:</p> <ul style="list-style-type: none"> • Preferring its own specialty search services over

³¹⁵ Directorate For Financial And Enterprise Affairs, Competition Committee, Big Data: Bringing Competition Policy to the Digital Era, 29-30 November 2016 <[https://one.oecd.org/document/DAF/COMP\(2016\)14/en/pdf](https://one.oecd.org/document/DAF/COMP(2016)14/en/pdf)>

³¹⁶ Gabriele Accardo, Big Data: Italian Authorities Launch Inquiries on Competition, Consumer Protection and Data Privacy Issues, 11 July 2017 <<https://tflnews.wordpress.com/2017/07/11/big-data-italian-authorities-launch-inquiries-on-competition-consumer-protection-and-data-privacy-issues/>>

³¹⁷ Italian Competition Authority, Misleading information for collection and use of data, investigation launched against Facebook, 6 April 2018 <<http://www.agcm.it/en/newsroom/press-releases/2455-misleading-information-for-collection-and-use-of-data,-investigation-launched-against-facebook.html>>

³¹⁸ Maayan Lubell, Israel's anti-trust regulator to look at internet giants, 9 January 2018 <<https://www.reuters.com/article/us-israel-antitrust-internet/israels-anti-trust-regulator-to-look-at-internet-giants-idUSKBN1EX1AQ>>

³¹⁹ Payaswini Upadhyay, Google Guilty Of Anti-Competitive Conduct, Says Competition Regulator, Bloomberg, 9 February 2018 <<https://www.bloombergquint.com/law-and-policy/2018/02/08/google-guilty-of-anti-competitive-conduct-says-competition-regulator>>

		<p>competing services;</p> <ul style="list-style-type: none"> • Use of content from competing search services (scraping); and • The non-portability of search advertising campaigns to rivals.³²⁰ <p>In 2016, CADE also opened an investigation into Google using its dominant position to divert traffic from its competitors to its own products based on a complaint filed by Yelp.³²¹</p> <p>No decision has been made yet.</p>
Canada	Investigation into Google's anticompetitive practices by Competition Bureau	<p>In April 2016, Canada's Competition Bureau closed its 2013 investigation into Google's search and advertising practices, specifically on whether Google engaged in practices intended to raise its rivals' costs, inhibit their ability to expand and generally make it more difficult for them to compete.</p> <p>The Competition Bureau said it found support for one allegation against Google related to its use of clauses in some contracts that harmed advertisers, however Google had already changed those clauses in 2013 and committed not to reintroduce them.³²²</p>
Russia	Voluntary settlement in proceedings against Google by Russia's Federal Antimonopoly Service	<p>Russia's Federal Antimonopoly Service accepted Google's voluntary settlement in April 2017 in a case originally filed by Yandex regarding Google's prohibition of pre-installation of competing developers' applications on Android devices.</p> <p>Google was fined US\$7.8 million and noted it would stop demanding exclusivity of its applications on Android devices in Russia, and would stop restricting the pre-installation of competing search engines and applications.³²³</p>
South Korea	South Korean Fair Trade Commission investigations into Google's	<p>In July 2013, the South Korean Fair Trade Commission (KFTC) dismissed its investigation into whether Google abused its dominant position in relation to internet search. The KFTC's investigation concluded that there was sufficient competition in the cellular</p>

³²⁰ Brad Haynes, Brazil investigates Google over antitrust charges, Reuters, 12 October 2013 <<https://www.reuters.com/article/us-google-brazil/brazil-investigates-google-over-antitrust-charges-idUSBRE99A0JM20131011>>

³²¹ Jeff Zalesin, Brazil Continues Google Antitrust Probe Without Microsoft, Law360 5 May 2016 <<https://www.law360.com/articles/792935/brazil-continues-google-antitrust-probe-without-microsoft>>

³²² Government of Canada, Competition Bureau statement regarding its investigation into alleged anti-competitive conduct by Google, 19 April 2016 <<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04066.html>>

³²³ Press release by the Federal Antimonopoly Service of the Russian Federation, FAS Russia Reaches Settlement with Google, 17 April 2017 <<http://en.fas.gov.ru/press-center/news/detail.html?id=49774>>

	anticompetitive conduct	search engine market such that consumers could easily use alternative search engine platforms. ³²⁴ The KFTC opened an investigation in February of 2017 into whether Google was hindering Samsung in the development of an alternative operating system. ³²⁵
Taiwan	Taiwan Fair Trade Commission investigation into Google's algorithms	In August 2015, the Taiwan Fair Trade Commission (TFTC) closed its investigation into Google's search result algorithms. The TFTC was investigating whether Google's search results gave Google Maps favourable placement on its search results pages, amounting to an unfair competitive practice. The TFTC found that there was no violation. ³²⁶
Japan	Law reform regarding digital monopolies (anticipated)	On 6 June 2017, the Japanese Federal Trade Commission published its 'Report of Study Group on Data and Competition Policy (Summary)', announcing that Japan is considering tough new rules on handling data in an effort to head off digital monopolies. ³²⁷

³²⁴ Youkyung Lee, South Korea's fair trade commission clears Google after 2-year probe, NBC News, 3 November 2015 <<https://www.nbcnews.com/business/south-koreas-fair-trade-commission-clears-google-after-2-year-6C10669675?>>

³²⁵ Kang Seung-woo, Google investigated for practice against Samsung, Korea Times, 13 February 2017 <http://www.koreatimes.co.kr/www/tech/2017/02/133_223884.html>

³²⁶ Su-Wan Wang and Elizabeth Xiao-Ru Wang, Focus on Innovation: A review of the Taiwan Far Trade Commission's Investigation on Google Maps, July 2016 <<https://www.competitionpolicyinternational.com/wp-content/uploads/2016/07/Wang.pdf>>

³²⁷ Japanese Federal Trade Commission, Report of Study Group on Data and Competition Policy (Summary), 6 June 2017 <<http://www.jftc.go.jp/en/pressreleases/yearly-2017/June/170606.files/170606-3.pdf>>