



Nine Submission

To ACCC

Digital Platforms Inquiry

April 2018

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1. Executive Summary

The emergence of dominant digital platforms in recent times presents business, consumers, policy makers and competition authorities with new and complex challenges.

Nine has sought to outline the nature of the business effects it faces from these digital platforms in the submission that follows. Nine hopes that its perspectives will assist the ACCC to better understand the competition issues in the media and advertising services markets that arise from the market power and practices of the dominant digital players, and to formulate potential regulatory solutions to these issues.

Nine's submission to the Commission is supplementary to the Free TV industry submission. The Free TV submission should be read first and referred to for industry revenue and trends and proposed regulatory solutions

Areas of concern

Nine considers that the digital platforms, particularly Facebook and Google, exert market power in various Australian markets. They derive their market power through their ubiquity and scale, including in the "big data" ecosystem in which data is the new currency powering advertising. These platforms offer services across nearly all forms of individual users' online activity, from search, content consumption, social media/networking, email and instant messaging to document processing, and mapping and directions. The breadth of their services, which are offered in exchange for personal information, has allowed the platforms to build up rich and integrated profiles of online users which are monetised by providing targeted advertising services to marketers. Rivals whose businesses also depend on selling advertising are challenged in their ability to compete with their rich global data-sets.

In Nine's submission, the exercise of this market power gives rise to the following areas of broad concern in relation to the state of competition in media and advertising services markets:

Content: Expropriation of the value of Nine's content and leveraging dominant positions in digital content distribution (see Section 6)

- As a leading creator and distributor of premium content the viability of Nine's business model is challenged by the platforms' dominance.
- The terms and conditions on which the digital platforms require Nine, and other content creators and owners, to make their content available advantage the platforms and denude the value of the content to the owners/creators.
- Because viewers are increasingly choosing to consume content online, and because the platforms act as the "gatekeepers" to the Internet, media companies have no choice but to distribute through the platforms despite the commercial disadvantages.
- The content produced by Nine and other media is highly valuable to the platforms, driving traffic to, and engagement on, their sites. Through advertising, the digital platforms capture a disproportionate share of the commercial benefit of the content without having incurred any of the costs of content production, at the expense of content creators.

- By their expropriation of the value of third-party content and leveraging of their dominant positions in digital content distribution to obtain advertising share, the digital platforms are now effectively acting as media companies. Efforts made to describe their operations as tech businesses rather than media businesses are a definition of convenience, and are self-serving and ultimately artificial.
- In a more competitive environment, the platforms would be forced to more fully recognise the value of Nine's content to their business and to negotiate some form of revenue sharing. Ultimately, consumers will suffer if original content creators and owners such as Nine cannot viably commercialise their outputs.

Advertising: Enhancing dominance in online advertising by setting industry standards and through vertical integration (see Section 7)

- Google owns and operates a multitude of businesses at different levels of the digital advertising supply chain and has put in place policies and practices reflecting this level of vertical integration. This allows it to take advantage of its dominant positions in the consumer access point and in various levels of the digital advertising marketplace. This has also created a closed or self-reinforcing system, and Google as the dominant intermediary in the publisher-advertiser exchange has been able to capture a disproportionate share of the benefits of the value transaction.
- Interoperability problems between Google's technologies and third-party technologies, in addition to exclusionary and bundling practices, raise barriers to entry or expansion for competing providers of advertising technologies.
- Google and Facebook also control critical inventory, thus acting both in the supply chain and as a supplier of advertising space. Google owns YouTube, the largest supply of video ad inventory in the world, as well as Google Search and Gmail. The only way to buy advertising space on these properties is to use Google's ad tech platforms.
- Google's dominance in the ad tech stack is detrimental not only for competitors in the stack, but also for publishers and advertisers. This allows Google to capture the benefits of the publisher-advertiser relationship for itself by "clipping the ticket" or charging excessive rents in respect of the intermediate transactions.
- Google and Facebook are very active in industry bodies that are involved in standard-setting processes that deliver commercial benefits for them whilst disadvantaging competitors in the online advertising space.
- Their ability to dictate the rules of engagement on the Internet and in online advertising is evidence of their market power and the inability of other participants to exert any meaningful countervailing bargaining power.

Consumers: Consumer and public interest issues arising from information asymmetry and a lack of evenness in regulation (see Section 8)

- As the digital platforms are currently not subject to the same kinds of content regulation, they are able to generate revenue from the distribution of content without any monitoring obligations.
- Lack of evenness in regulation creates an unequal playing field for the media companies competing for advertising revenue. It also leads to poorer outcomes for consumers online and decreases the quality of news and information that the public receives.
- Consumers online are not fully apprised of the extent of the collection of their personal data, or the value proposition it represents to the digital platforms. There is little transparency in the manner in which the digital platforms collect data or how they use it, including for example in relation to building profiles of people who may not be users of their service. This raises concerns about consent, as well as questions about the adequacy of existing regulation.
- The content being provided to consumers is not necessarily based on highest relevance or informative quality but may reflect self-interested strategic decisions by the platforms.
- Recent high-profile and large-scale privacy and security breaches are evidence of another form of consumer harm that flows from their dominance. Their enduring popularity even in light of these controversies demonstrates the improbability of the platforms being displaced in the near future.

In this submission, Nine sets out its views on the desired scope of the Commission's inquiry (section 3) and the relevant markets of concern (section 4). It then provides an overview of its business as a premium content business (section 5 and Appendix A) and the effect of the digital platforms' dominance on Nine's ability to compete for advertising revenue and continue to extract value for its content (section 6). The following sections (sections 7 to 8) address its concerns about various competition and consumer issues arising from the dominance of the digital platforms in the distribution of content and advertising services online.

2. Introduction

Consumers are increasingly choosing to access content online – a growing proportion of Nine's audience is choosing to view online rather than via linear television – and the digital platforms now control the gateway to the Internet. Nine's content must be distributed on multiple platforms and multiple devices in order to be discoverable and gain the reach required for a mass media business.

For this reason, Nine is dependent on Facebook and Google to drive traffic and revenue on its own platforms, whilst also still ultimately being in a competitive relationship for advertising revenue. Effectively, Nine has little choice but to engage with digital media companies such as Google and Facebook in order to participate online.

(CIC) The fundamental issue with this is that there is no equitable remuneration for the use of publisher content on digital platforms, and they are extracting advertising dollars from the engagement with that content. These benefits accruing to the digital platforms are twofold – not

only do they attract visitors to their platforms where they are able to serve them advertising and charge advertisers for it, but at the same time they are able to collect valuable behavioural and other data to “power” their advertising in a highly targeted manner.

While the digital platforms may argue that they provide a valuable marketing platform, Nine submits that the pendulum has swung too far in favour of free content on their platforms, making it harder and harder to attract users to our “owned” platform to commercialise. At the same time, the digital platforms continue to amass scale and enjoy unprecedented access to capital, with market capitalisations dwarfing those of Australian companies.

There is no doubt that digital platforms deliver many advantages to consumers in their ability to reach more people; to engage and communicate; and easily access information through search. The perception from consumers is that these are free services without necessarily understanding the economic transaction that is occurring when they give the platforms permission to collect and sell to third parties their personal information, including their behaviours, preferences and social networks.

The digital platforms likewise present a conundrum for content producers such as Nine. They offer Nine the opportunity to reach a far broader audience and engage in an interactive way with viewers, thereby stimulating demand. On the other hand, Nine’s traditional business model has depended on proprietary platforms and distribution through which it has been able to commercialise its content and generate revenue to sustainably extract the optimal commercial benefit for its shareholders. The digital platforms have become distribution channels and de facto media companies, and are disrupting the basis of the advertising model that Nine and others have been reliant upon. Indeed, commercial free-to-air broadcasters are required by their enabling legislation to provide their programs to the general public for free¹ which necessitates funding primarily through advertising revenue.²

The digital platforms also compete with Nine for website traffic, and in many cases they compete using Nine’s own content. In more ways than one, the digital platforms have in fact added considerable cost and complexity to Nine’s business.

The digital platforms have aggressively competed for advertising revenues by growing their business, buying out competition and creating new products and businesses. In doing so they have grown to a size and scale that has the potential to adversely affect consumers and the market by seeking monopoly rents, setting standards in their commercial interests, and compelling other commercial entities to engage in markets which they have created on their terms (ie. social media, search, as well as the broader digital advertising and consumer ecosystem) and which provide limited to no commercial return to participants in many cases.

The challenge of this inquiry and for the Commission is to identify the right regulatory solutions:

- to ensure there is continued investment in good-quality, premium content for the benefit of consumers;
- to ensure there is strong competitive tension to drive customer service and competitive pricing;
- to reduce market distortions arising from the scale and ubiquity of the digital platforms; and

¹ *Broadcasting Services Act 1992* (Cth) section 14(1)(b)(ii)

² See also section 14(1)(c), *Broadcasting Services Act 1992* (Cth)

- where there is market failure, to develop a regulated solution so consumers continue to obtain free access to a range of premium content and enjoy the benefits that these new platforms can offer consumers.

For Nine, the challenge is to find a commercially sustainable model with the digital platforms to fairly share the revenue they obtain from our valuable content while also recognising their reach. (CIC)

3. Scope of the Inquiry

Nine is a content business with an organisational philosophy to “Create great content, distribute it broadly, engage audiences and advertisers”. In line with its strategy, Nine invests hundreds of millions of dollars in quality content each year. In order to participate in the new digital media environment and capture audiences moving from broadcast to digital, Nine has also made significant investment in its digital publishing business. Nine’s philosophy applies equally to its free-to-air broadcasting business as well as its digital publishing business.

Nine believe that the inquiry should be focusing most of its efforts on digital platforms that are using content generated by media organisations from which they earn advertising revenue. Unlike Over The Top (OTT) video businesses such as Netflix and Stan which originate, commercially acquire and distribute content for a fee, platforms like Google and Facebook distribute other’s content and derive advertising revenue from that content. Google additionally derives revenue and/or valuable data from the operating systems, user interfaces and technologies that feature in the online advertising supply chain by owning key assets such as Android, Chrome, and various products in their “ad tech stack”.

While the terms of reference for the inquiry place a particular emphasis on the supply of news and journalistic content, it is important that the inquiry extends beyond news and current affairs and considers the impact of digital platforms on the supply of all types of content, including for example entertainment and lifestyle. These genres are costly and are aggregated on digital platforms with little to no remuneration to content producers.

Nine submits that it is crucial to look at the impact of the digital platforms on the entire range of content, because each genre is integral to Nine’s ability to continue to function and provide news and journalistic content. The return on investment on all types of content is adversely impacted by the policies and practices of the digital platforms and this, in turn, affects Nine’s ability to continue to deliver quality news and journalistic content. As the viability of Nine’s news services is ultimately dependent on the entire suite of content offerings that Nine provides across all genres, the issues that arise from Google and Facebook monetising third-party content cannot be viewed in isolation, limited to news and journalistic content. This is a systemic problem applying across the board to all of Nine’s content categories (or “content pillars”).

Undoubtedly there are other established and emerging platforms which require attention including Apple News, Twitter and Amazon. However, due to the ubiquity of Google in search, content aggregation and the advertising supply chain, and Facebook’s dominance in the closed social media and instant messaging environment, Nine considers that these actors require the most focus of this inquiry.

4. Relevant markets and market power

The very nature of digital platforms present challenges to orthodox approaches to market definition, which focus on market shares and supply and demand side substitutability as measured by responses to price increases. It is through their conduct and practices that the market power of the digital platforms is best understood, rather than through an assessment of usual measures such as market shares or consumer responses to price movements.

The services offered by digital platforms are multi-faceted and often either complementary (eg. Facebook's social media services and WhatsApp messaging services) or at different functional levels of the supply chain (eg. Google's YouTube content and advertising platform, or Google's search/content distribution services, browser software, mobile phone operating system, cloud computing infrastructure, and different programmatic advertising technologies).

These services often do not involve any monetary transactions with consumers, operating in two-sided markets, involving "free" provision of social networking, search and content distribution services on the consumer-facing demand side that are monetised through paid advertising services on the business-facing side. The personal data obtained from individual users on the consumer-facing side is key to the value proposition of the advertising services and technologies on the business-facing side of the relevant markets.

While exact boundaries of the various markets the digital platforms operate in are not clear, Nine considers that the relevant markets for the ACCC to consider are not necessarily limited to that for digital advertising, and may also include markets for: (a) the provision of social networking services; (b) the distribution of content on both linear and digital services; and (c) the provision of technology platforms and systems which facilitate the sale, purchase and publication of online advertising. Google and Facebook demonstrate market power in these markets.

Digital platforms, particularly Google and Facebook, derive market power through their ubiquity and scale. The data collected by Google and Facebook provide them with an unparalleled market advantage through their ability to predict consumer behaviour and target advertisements to highly stratified audience segments. Given the role of network effects in increasing the perceived value and attractiveness of these types of services, and the centrality of access to users' personal information to their commercial model, a more appropriate measure of market power may be by number of users.

The platforms' unrivalled data storage and processing capabilities create barriers to entry that are insurmountable, at least in the short to medium term, and absent some disruptive technological event or regulation these barriers may become permanent. This market dominance is facilitated by powerful network effects, which gives the platforms a likely permanent advantage over potential rivals.

These barriers to entry are further enhanced by a practice of acquiring any would-be rivals or providers of complementary services, including those at early-stage development, and by engaging in practices which deprive new and smaller businesses from gaining traction. Examples include Facebook's acquisition of Instagram and WhatsApp and Google's acquisition of YouTube, DoubleClick, Waze, and most recently Tenor. Google has made a number of strategic acquisitions of key products in the advertising technology stack which it has built into a vertically integrated supply chain. Google's YouTube is by far the world's largest video-sharing website and the most important source of inventory (advertising space) for online video advertising in the world. It is the third most visited site on the Internet, with over 3 billion searches a month.

Facebook is the dominant social networking platform and, notwithstanding the recent Cambridge Analytica controversy, still the world's eighth-most-valuable publicly listed firm.³ As the Open Market Institute stated in its open letter to the FTC⁴ Facebook plays the role "as a critical gatekeeper [which] gives the corporation the ability to regulate communications across vast swaths of [society], and to serve as a self-appointed censor of the content of a large and growing portion of online communications ... Facebook is using its increasing market power in ways that arguably stifle innovation, undermine privacy, and divert readers and advertising revenue away from trustworthy sources of news and information."

Facebook's level of penetration in social networking traffic and capture of online advertising provides it with a defence to competition from new or existing rivals. It seems highly unlikely that usual competitive process will operate to dislodge Facebook's dominance in any foreseeable future. In markets where personal data is the key asset, Facebook has an undeniable competitive advantage.

Google is the dominant search engine provider and a virtual monopolist. As noted in the Issues Paper (at p13), Google is estimated to have 86% of global search and 95% of search in Australia. The second largest search engine in the world⁵, after Google's flagship search product, is YouTube, also owned by Google.

Google has produced a consumer perception (that has become almost impossible to verify by the absence of any comparative competitor) that its search quality is unsurpassed, which has given rise to a monopoly over time. Microsoft's attempt to challenge Google in search, through its product Bing, has had little success, even with Microsoft's backing.⁶ Google has been able to leverage data collected from its search utility, including valuable consumer intent data, to drive advertising revenues, including through its AdWords model which purports to rely on an organic search function. It is difficult to see how a competitive rival to Google could emerge within the current environment. In effect, Google has defined the search market through its product and now effectively "owns" the market, setting the rules and terms of participation through which it operates and others interact with it.

What is less visible to the consumer is the dominance that Google has in the advertising technology infrastructure that serves digital advertising to the consumer. Its ownership of businesses and processes within the "ad tech stack" has created a vertically integrated digital advertising ecosystem in which it controls a large share of the pipeline infrastructure through which programmatic advertising occurs, as well as owning the world's largest video platform on which that advertising may be served. Not only does Google hold the largest supply of video advertising inventory in the world through YouTube, but by virtue of its vertical integration in the ad tech stack and the market power it wields for a number of key software products in that stack it acts on both the supply and demand side of the advertising supply chain. In addition, it dominates the consumer gateway through search and other enabling applications such as Google Maps.

The unprecedented scale and ubiquity of Google and Facebook has led to their effective dominance in digital advertising. In the United States, 73% of all digital advertising revenue goes to Google and

³ The Economist, 'The Facebook scandal could change politics as well as the internet', 24 March 2018.

⁴ Letter from the Open Market Institute to the Federal Trade Commission 21 October 2017

⁵ <https://www.mushroomnetworks.com/infographics/youtube---the-2nd-largest-search-engine-infographic/>

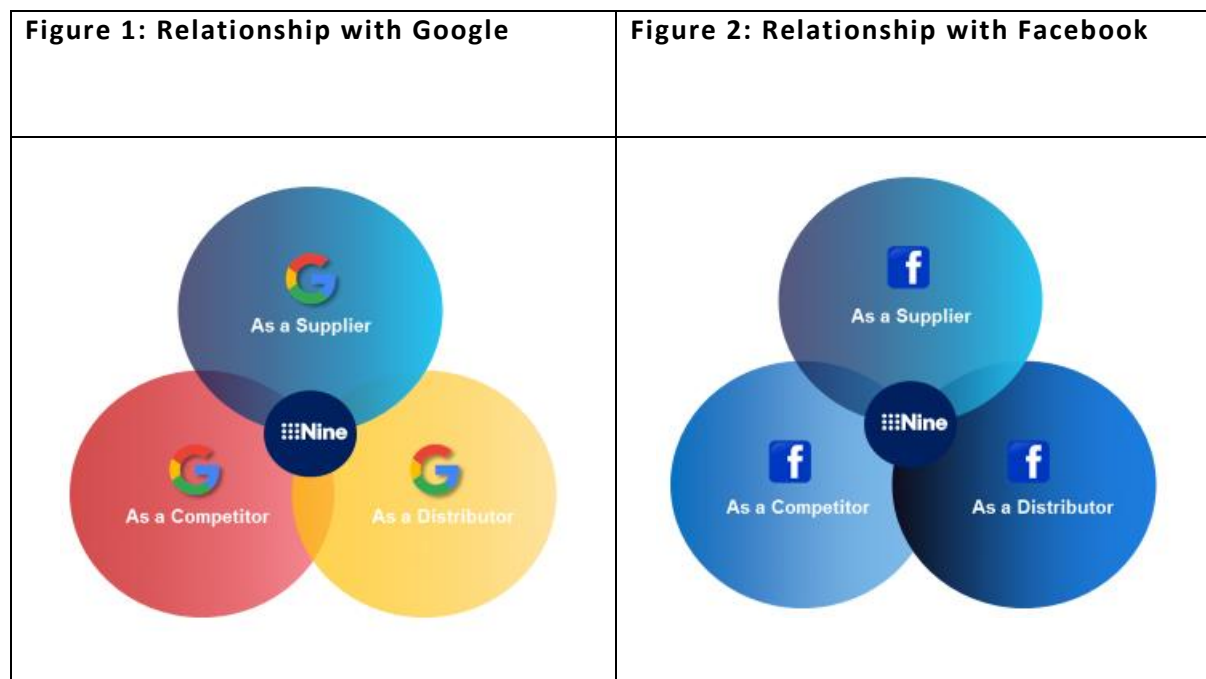
⁶ <https://www.reliablesoft.net/top-10-search-engines-in-the-world/>

Facebook, and 83% of all ad revenue growth in 2017 went to Google and Facebook.⁷ Their scale and ubiquity has led to complex market distortions, including powerful network effects in the collection of data and users, unchecked vertical integration, and the ability to dictate the terms of participation in certain markets, including the handing over of premium and proprietary content for little to no remuneration, as well as setting standards that benefit themselves to the detriment others. Nine submits these market distortions are each an extension of Google and Facebook’s unprecedented scale.

While Google and Facebook hold considerable market power in various points in the supply chain there is the potential for dominance in other growth areas such as artificial intelligence, virtual reality and voice-activated in-home systems. These systems are also reliant on big data, and Facebook and Google are both actively investing in them and have a natural advantage from which they can leverage their existing scale into these new markets.

4.1. Nine’s touch points to digital platforms

The prevalence of Google and Facebook in the online environment means that Nine has a complex and multi-faceted relationship with these digital platforms.



Nine is a supplier of content for distribution by the platforms, a competitor to the platforms for the supply of advertising, a customer for advertising and marketing services and traffic referral to enable the discoverability of its content and, potentially a partner.

The digital platforms present complex issues for Nine. While they offer Nine the opportunity to reach a broader audience, make Nine’s content discoverable, cross-refer traffic to Nine’s platforms and allow Nine to engage in an interactive way with viewers, Nine’s traditional business model has depended on proprietary platforms and distribution through which it has been able to commercialise its content and generate revenue and sustainability to extract the optimal

⁷ <https://www.cnbc.com/2017/12/20/google-facebook-digital-ad-marketshare-growth-pivotal.html>

commercial benefit for its shareholders. Nine is dependent on Facebook and Google (including YouTube) to drive traffic and revenue on its own platforms, whilst also still ultimately being in a competitive relationship for advertising revenue.

A fundamental issue is that there is no equitable remuneration for the use of publisher content on digital platforms, and the digital platforms are extracting advertising dollars from the engagement with that content. This dynamic is compounded by the fact that Google and Facebook are in direct competition with publishers for advertising revenue. Google and Facebook are incentivised to increase traffic to their own platforms and to retain that traffic. (CIC) In comparison, Google and Facebook are able to always derive value from that same content, because it is being delivered in their ecosystem and is keeping that user engaged on their platform. Referring traffic through to third-party websites, including the websites of publishers, is cannibalising their own traffic.

Unlike other retail and consumer brands which use digital distribution and social media in a simple *quid pro quo* for promotional investment, Nine's presence on the digital platforms involves a dilution of the value in its content (the product) due to the advertising model on which the businesses of both Nine and the digital platforms depend. This means that Nine and the digital platforms operate both in a distribution relationship and a competitive relationship with conflicting incentives.

The conundrum is that Nine must participate in these newly created markets of social media and search in order for its content to be discovered. This is the case in circumstances where the digital platforms have set the operating standards for discoverability and traffic referrals, being a significant "digital door" to Nine's content.

5. Nine is a content business

Nine is a content business. Each one of Nine's business activities involves content at its core, with a particular focus on distribution of premium content across multiple platforms to reach and engage a broader audience. Nine's unifying strategy underpinning both its free-to-air and digital businesses is to create great content, distribute it broadly, and engage audience and advertisers.

For this reason, Nine invests heavily in its content. (CIC)

Nine's business is built around the premium local content it produces, across key content pillars of news, sport, lifestyle and entertainment, and this mix has extended to our digital platforms.

(CIC)

The success of Nine's free-to-air business is highly dependent on its content slate and programming performance. Flagship programs such as Nine's coverage of the State of Origin series and NRL premiership competition, *Nine News*, *Married at First Sight*, *Australian Ninja Warrior*, *60 Minutes*, *The Block*, *A Current Affair* and *The Voice*, are designed for mass appeal to drive audience by retaining and growing audiences. By broadening its content base, Nine seeks to attract audiences of all types, and to maximise the ability to monetise its premium content.

News and current affairs remains central to Nine's business, an anchor in Nine's schedule. However, the production of quality journalism and news is costly and labour-intensive. For example, significant news items will involve multiple journalists, producers, cameramen and editors in order to produce a short news segment, including research, interviewing, filming and collection of footage, fact checking and editing. In many cases, resources are required in multiple jurisdictions – both on the ground at the scene and around the country. In addition, the new-media environment has

exacerbated the costs of news production in many ways, also requiring the distribution and promotion of news across multiple channels, including online and via social media.

In order to participate in the new digital media environment and capture audiences moving from broadcast to digital, Nine has made significant investment in its digital publishing business. Currently, Nine's digital business employs (CIC) This investment has resulted in successful digital verticals, including nine.com.au which is consistently ranked the second commercial news site in Australia, (see Figure 4 below) and 9Honey.com which is central to Nine's lifestyle content pillar (see Appendix A) and has become a leading destination lifestyle network for women.

- 9Now provides live streaming of Nine's channels as well as an on-demand and supplementary content service. It has over 5.75 million registered users who can account for more than 10% of a program's audience across TV and digital.
- 9Honey, a dedicated women's lifestyle network, includes internally generated lifestyle content as well as Nine Network content. It is currently the #3 ranked lifestyle website in Australia, reaching a total audience of around 1.78 million in the month of February 2018.
- nine.com.au, Nine's digital news vertical, is a destination news website reaching 10 million unique visitors a month⁸ and consistently ranked Australia's #2 commercial news site.
- Wide World of Sports (WWOS), Nine's digital sport vertical, offers users the Best Seat in the house for video, highlights and analysis. It consistently reaches an audience of 1 million and ranks between fourth and eighth in the sport digital market in Australia.

In addition to 9Now, nine.com.au and 9Honey, Nine provides pickle.nine.com.au, thefix.nine.com.au and finance.nine.com.au. Nine is also exploring subscription models, presently working on Future Women, a professional female vertical based on quality long and short-form journalism, supplemented by commercial partners and advertising. This mix of content verticals in Nine's digital publishing business closely reflect Nine's content pillars in its broadcast schedule, in order to provide a broad range of cultural and entertainment material to engage its audience.

⁸ March internal data

Figure 4: Ranking of News websites – Nielsen digital ratings

	5.749M
	4.849M
	4.557M
	3.910M
	3.072M
Daily 	2.778M
	2.570M
	2.556M
	2.411M
	2.141M
	1.965M

Source: Nielsen Digital Ratings Monthly February 2018.

9News.com.au operates a separate newsroom, which has required considerable investment by Nine. Furthermore, the requirement to produce social media material requires additional resourcing. In particular, the production of social media content (and in many cases unique social media content) is now an essential part of Nine’s content production process and added to the cost and complexity of our digital news offering. Nine has recently deployed (CIC)

The significant investments made by Nine in digital news production have come at a cost. Over time, Nine has had to rationalise its news offering where necessary or rationalise its resources. For example:

- In 2017, Nine restructured its Darwin newsroom and consolidated it with its Queensland Bureau. The local Darwin bulletin was integrated as part of the broader State-wide Queensland regional bulletin.
- In 2017, Nine entered into a joint venture arrangement to pool its helicopters with Seven West Media.
- In 2013, Nine entered into an arrangement with Sky News and Seven West Media to share its proprietary election predictive data.

6. Expropriating the value of Nine’s content

Key message

- Digital platforms have had a profound effect on Nine’s business. They have changed the way Nine’s news and content is discovered, how it engages with viewers, and how it promotes its programs. While digital platforms offer wider distribution for Nine’s content, stimulate higher engagement and create a conversation beyond traditional media, they have contributed to a marked decrease in audience and revenue from the free-to-air platform. Evidence of this decrease is presented in the Free TV submission.
- Viewer decline has been driven in part by viewers sourcing their news and entertainment content, from an array of new digital platforms and Over The Top providers. As advertisers

have increasingly diverted their budgets to new digital platforms, including those which distribute Nine's content, this has contributed to a situation whereby the digital platforms are effectively "free-riding" on the value of the content that Nine has borne all the costs of producing.

- At the same time as advertising revenues are declining, new transaction costs have arisen as a result of necessary participation with digital platforms, including making content discoverable, meeting the content appetite of users on these platforms, and engaging with Nine viewers.
- Due to their dominance in digital distribution, the platforms have unequal bargaining power in their commercial relationships with content creators such as Nine. They have relied on this dominance to put in place policies and practices that favour their own digital advertising services to the detriment of Nine and other competitors for digital advertising spend.
- Content creators are essentially forced to participate with digital platforms in order to ensure the discoverability of their content. The terms of that participation have been largely dictated by the digital platforms, in many cases with no real opportunity for bilateral negotiation, and include the handing over of premium content to digital platforms to drive audiences to their websites, where they can be served advertising for the platforms' commercial gain.⁹
- This value transfer takes place in an environment of regulatory disparity. Nine is subject to strict regulatory requirements and licence conditions, including in relation to the standard and composition of its content, while the digital platforms prefer to be characterised as "tech companies" that do not have responsibility for the content they distribute, or require media regulation (see section 4 of the Free TV submission).

6.1. Importance of advertising revenue

Both Nine's television and digital businesses are primarily advertiser-funded and intrinsically linked to the quality of the content it produces, curates and distributes. Nine's core business activity is monetising that content, and the commercialisation model for Nine's content on both its television and digital platforms is to maximise audiences in order to increase the return on investment for that content via advertising revenues. Indeed, free-to-air broadcasters are required by their enabling legislation to provide their programs to the general public for free¹⁰ which necessitates funding primarily through advertising revenue.¹¹

While in the past this commercialisation model worked well in bringing audiences and advertisers together, the changing media *environment* has brought enormous disruption. Advertising revenue for commercial free-to-air television businesses has declined, while online advertising revenue is now more than double that of commercial free-to-air television. It is now increasingly difficult to monetise premium content in an environment where digital platforms and aggregators have been able to extract significant advertising revenue from the overall advertising market in respect of content produced by others. The share of advertising that has been diverted to Google and

⁹ For example, Google's previous One Click Free policy which required news outlets to provide 3 free articles before placing their content behind a paywall.

¹⁰ *Broadcasting Services Act 1992* (Cth) section 14(1)(b)(ii)

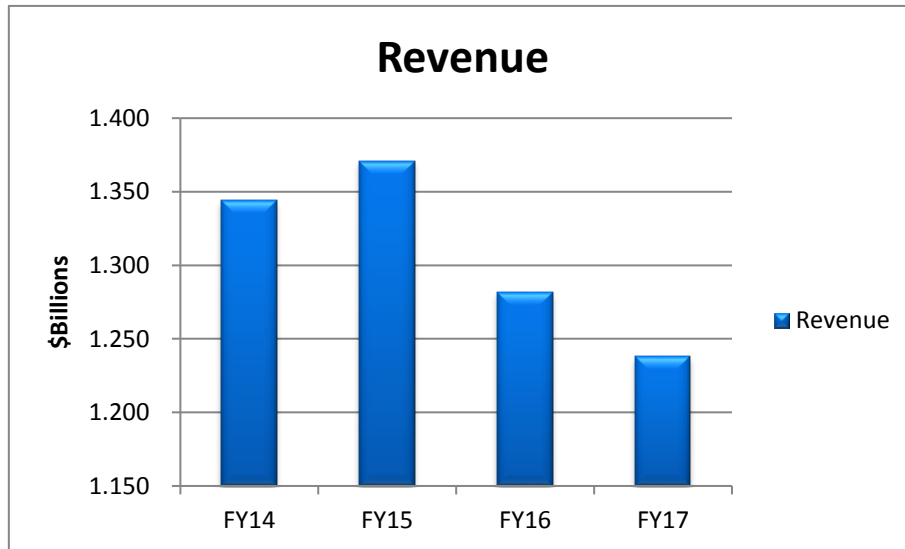
¹¹ See also section 14(1)(c), *Broadcasting Services Act 1992* (Cth)

Facebook cannot be underestimated, with an even greater share of growth in digital advertising being captured by them. Free-to-air television's competitive landscape has shifted immensely with the entry of these large multinational players that enjoy global scale.

6.1.1. Declining revenues

Nine's total group revenue over a four-year period shows the effects of the shift from traditional advertising to digital advertising services which are dominated by the digital platforms.

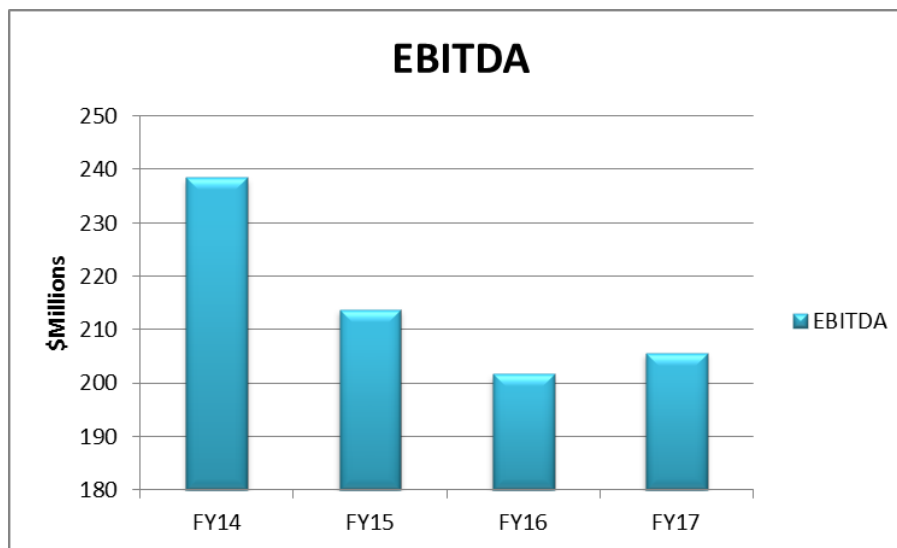
Figure 5: Group Revenue 2014 - 2017¹²



Correspondingly, EBITDA (before abnormal items) has also been impacted by the rise of the digital marketplace. The free-to-air business is predominantly a fixed-cost business so declines in revenue are amplified at the EBITDA line.

¹² FY14 1.344b, FY 15 1.371b, FY 16 1.282b, FY 17 1.238b.

Figure 6: EBITDA¹³ 2014-2017



While Nine has been diligent in managing its cost base and has undergone a number of cost efficiency programs, its profit continues to be impacted both by increased pressure from digital platforms and advertiser and audience fragmentation. The challenge for Nine as a media business is to find ways to commercialise its content outside the traditional linear TV business model. Nine is addressing this challenge by expanding its digital operations and exploring subscription-based models in the lifestyle space with Future Women, the SVOD area with Stan (CIC)

6.2. Changing patterns of consumption and disruptions to public interest journalism

While the vital importance of public interest journalism for democracy has not declined, there have been enormous changes in patterns of consumption for news as audiences increasingly access news via mobile devices and social media, with more intense competition for attention across multiple platforms, and now on a global scale.

Platform intermediaries such as Google and Facebook have had a material effect on how audiences are aggregated, the advertising revenues that can be obtained in relation to those audiences, and the ability for content creators to recoup on their investment in quality journalism. News providers such as Nine that could previously rely on advertising to fund journalism have had to be innovative in finding new revenue streams, and in transitioning and expanding their business models to online publishing.

Although there is a general consensus that the public interest journalism model is under threat, with existing sources of revenue in decline, costs escalating and third-party digital platforms not providing return on investment, Nine continues to invest in the discoverability of its journalism via content aggregators. As noted above, this is because Google and Facebook currently act as both distribution channels and gatekeepers of discoverable journalism.

Google and Facebook are not only advertisers but also the world's largest publishers and distributors of others' content. The result is that smaller publishers must simultaneously compete with Google

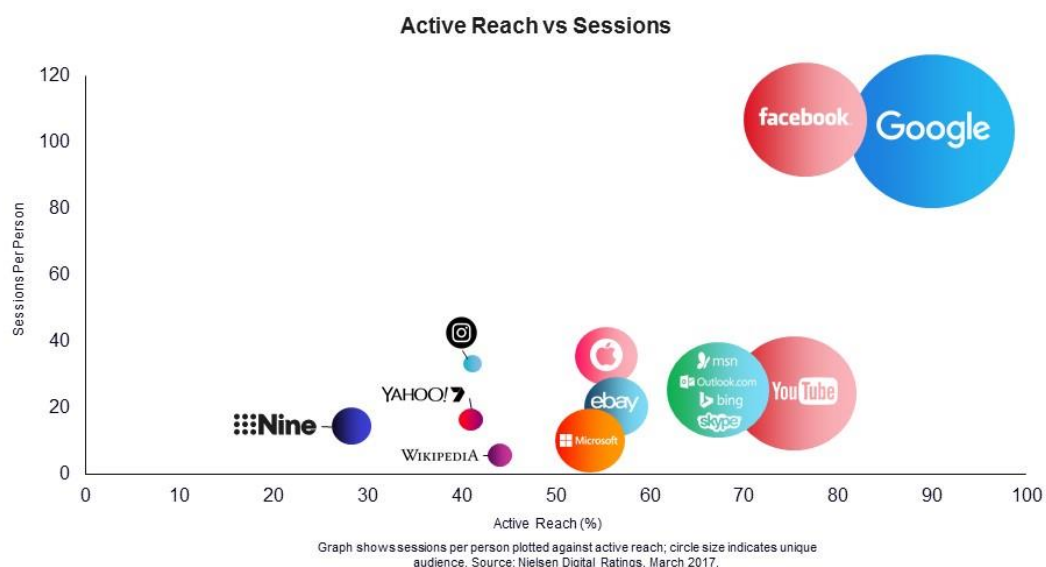
¹³ 238.5m, 213.8m, 199.5m, 205.4m, *Continuing operations (ex Nine Live)

^ 1st full year of NWS/STW and one-hour News

and Facebook to attract users to their sites and attract a larger share of advertisers' budgets, while also relying on them to drive users to their sites via Google search traffic or the Facebook Newsfeed.

Competing with Google and Facebook for advertising revenue in the digital ecosystem is extremely difficult due to their scale and reach. Facebook and Google dominate the online consumption of content by Australians. No other digital platform has a comparable hold on users' time or attention (see Figure 7 below). Their ability to reach consumers, in addition to the wealth of personal data they hold on these users due to their various vertical and conglomerate interests, has led to Google and Facebook becoming the primary providers of advertising services to companies wishing to market to consumers in a highly targeted manner.

Figure 7: Active Reach vs sessions



6.3. Lack of regulation creates an uneven playing field

The content produced by Nine for free-to-air transmission is subject to significant regulation, including classification, quotas for Australian content, advertising quota limits and restrictions, and community standards enforced by the Australian Communications and Media Authority (see section 4 of the Free TV submission). Nine's news gathering teams are subject to additional complex legal requirements including in relation to privacy, surveillance, court reporting, defamation and contempt, which require experienced editorial staff to manage these sensitive legal risks.

The large multinational digital entrants are not subject to similar regulation in the delivery of content, which has enabled them to monetise content in a largely unrestrained fashion. This has contributed to an uneven playing field for free-to-air broadcasters versus digital platforms, even though there is considerable overlap in the content being delivered. The digital platforms are in essence media companies within the definition of the ACCC's Media Merger Guidelines but they are not regulated as such:

Media refers to means of mass communication, and the term can be used to cover the message (which may be content or advertising), the medium (mode of delivery) or the messenger (media outlet). Media outlets typically generate revenue from advertising

*and/or subscription fees, although the concept of what constitutes a media business is likely to evolve over time.*¹⁴

As a media platform responsible for a number of media distribution platforms, Nine has responsibility for the content it puts out over those platforms, whether it be a spectrum or an IP network. Nine must ensure that it complies with defamation laws, copyright laws and the industry Code of Practice, and pays for the use of third-party content. Nine also carries the responsibility for user posts on their programs' Facebook sites even though those posts are user-generated, rather than originating from Nine. This position has been encapsulated in case law¹⁵ and effectively requires Nine to moderate its Facebook pages on a 24-hour-day basis.

On the other hand, businesses who earn revenue through the distribution of this content online, such as Google and Facebook, do not have equal obligations in relation to copyright infringing and other illegal content. They can freely serve up through their search facility pirating and other bit torrent sites which allow users to illegally download content. The entertainment genre is the most affected by the illegal downloading of content from the Internet.

Furthermore, it is Nine's responsibility to monitor these platforms for the illegal copying of our own content through automated tools like Facebook Copyright Manager and Google's YouTube Rights Manager. To utilise these tools, Nine is required to upload the relevant copyrighted material so it can be cross-matched on the platform. As Nine does not have the financial resources to upload all content to cross-match, it is unable to protect all of its material.

6.4. Unequal bargaining power in commercial relationships with digital platforms

Google and Facebook now play such an important role in the distribution of content that they effectively act as gatekeepers for the discoverability of content, including news content online. Google owns the consumer gateway through search and Facebook is increasingly becoming an independent distribution channel for news content of its choosing through its NewsFeed. Their algorithms determine the "relevance" of news content, and how much of their audience should be referred to third-party websites. (CIC)

The rise of the digital platforms has brought enormous disruption to the news-content production and distribution model, with many in agreement that the model is broken. As a result of their dominance in digital distribution, content creators are forced to participate with the digital platforms in order to ensure the discoverability of their own content. The digital platforms have significantly more bargaining power than the content creators in this equation, meaning that the terms of participation have been largely non-negotiable and weighted heavily in favour of the platforms' commercial interests.

(CIC)

The full terms and conditions can be found at the links below.

- Facebook user terms - <https://www.facebook.com/legal/terms>
- Facebook brand terms - https://www.facebook.com/page_guidelines.php
- Facebook general community standards - <https://www.facebook.com/communitystandards>
- Twitter terms - <https://twitter.com/en/tos#intlTerms>

¹⁴ ACCC, Media Merger Guidelines 2017, paragraph 12.

¹⁵ ACCC v Allergy Pathway (No. 2) [2011] FCA 74

- Instagram terms - <https://help.instagram.com/478745558852511>
- YouTube terms - <https://www.youtube.com/t/terms>

The core problem is that in addition to being distributors of publishers' content, Google and Facebook are in direct competition with publishers for advertising revenue. Google and Facebook are incentivised to increase traffic to their own platforms and to retain that traffic so they can (a) serve advertising to that audience, and (b) collect valuable behavioural data about that audience which increases the perceived value and effectiveness of their advertising. Referring traffic through to third-party websites, including the websites of publishers, is cannibalising their own traffic and diminishing their market power in online advertising.

We outline below some examples of one-sided terms and practices that result in the diversion of advertising revenue from Nine to digital platforms.

6.4.1. Rich snippets

Google's introduction of Rich Snippets, in which instant answers supplied by third-parties to user questions are provided on the first page returned from a Google search, is claimed to be provided by Google because its audience wants to know the answer immediately, rather than having to click through to the creator's website to find an answer. The commercial implication is Google retains audiences on its platform and serves its own advertising rather than delivering audiences to the third-party creator to be monetised by the actual content producer.

Publishers, including Nine, are encouraged to provide snippets of their content in order to get onto Google's first search page, but this in effect reduces the likelihood of users clicking through to publishers' pages to get the answer to their question, and so they stay on the Google page and can continue to be served Google's advertising. This has a direct impact on referral traffic through Google, with studies showing that featured snippets have a material effect on click-through rates to the organic search result¹⁶ and that almost 30% of Google results have featured snippets.¹⁷

6.4.2. Lack of transparency over algorithms

Because of a lack of transparency around the Google and Facebook algorithms there are questions as to how the relevance of material is determined and whether the algorithms are geared to benefit Google and Facebook instead of publishers. Neither Google nor Facebook provide transparency over their algorithms, despite being the two main aggregators of news content for Australian online users. This permits unilateral changes to their respective algorithms that have the capacity to deliver them commercial advantages and entrench their market power in digital advertising by foreclosing competition.

The lack of transparency over the algorithms creates many opportunities for abuse. For example, in 2017, Google was fined a record €2.42 billion by the EU Commission for promoting its own shopping comparison service (Google Shopping) at the top of search results.

In January 2018, Facebook announced that it would be changing its news feed algorithm to prioritise content from "friends, family and groups" rather than other content providers such as traditional

¹⁶ <https://searchengineland.com/another-featured-snippet-study-shows-steal-significant-traffic-first-organic-result-275967>

¹⁷ <https://searchengineland.com/new-study-featured-snippets-within-google-reveal-growth-optimization-techniques-275714>

news publishers. Facebook claimed that this new algorithm was a response to users' desires to return to their community. However, one of the practical results of the change is that traditional publishers have to pay to boost their content in the Newsfeed rather than simply rely on organic relevance in the Newsfeed. (CIC)

While Nine attempts to optimise its content for organic reach, the new algorithm change is making it much harder to obtain broad reach and Nine is now required to pay for boosts to maintain the previous reach that it had. This has caused Nine to recalibrate how it produces content and engages with this platform, even though there is no guarantee that there will not be further changes to the algorithm, which would require Nine to change its business again and invest more to engage with its audiences.

6.4.3. Single sign on

Google and Facebook are also attempting to "own" the sign in relationship with the user through their approach to single sign on (SSO), and in Google's case also managing the billing relationship.

The proposed "Subscribe with Google" approach will allow a user to subscribe to multiple news sources, with Google managing the billing and aggregating a user's subscriptions in the one place.¹⁸ Facebook also has a SSO product which allows users to use their Facebook credentials to sign in to other applications. While this is very convenient for users it is also another consumer gateway that Google and Facebook are attempting to dominate. It allows Google and Facebook to obtain sign on data, as well as scraping user behaviour and other data on the accessed website, including allowing them greater access to valuable transaction data which they can combine with their already rich sources of consumer intent and behavioural data.

If these sign on protocols become the consumer standard, it then becomes another touch point controlled by the digital platforms to the detriment of content providers on the Internet. They do not share the sign on data, and it further consolidates the digital platforms' ownership of consumers' personal data.

6.5. Digital platforms derive commercial benefit from Nine's content

Facebook and Google dominate the online consumption of content by Australians. They are the predominant digital platforms with an unparalleled hold on users' time and attention, effectively acting as the "digital door" to online content. For this reason alone, Nine has no option but to participate with the platforms, in order to ensure the discoverability of its content. Their scale and leverage compels Nine to participate on their terms, in a manner that, in isolation, may not be considered commercially rational.

Both Google and Facebook have been effective in extracting substantial advertising dollars from the advertising market through advertising that appears around content produced by third-parties, including Nine. This has resulted in a systemic issue with money flow at scale, with creators of journalistic content and entertainment not being fairly remunerated in respect of their content. At the same time neither Google nor Facebook produce their own content and only invest through

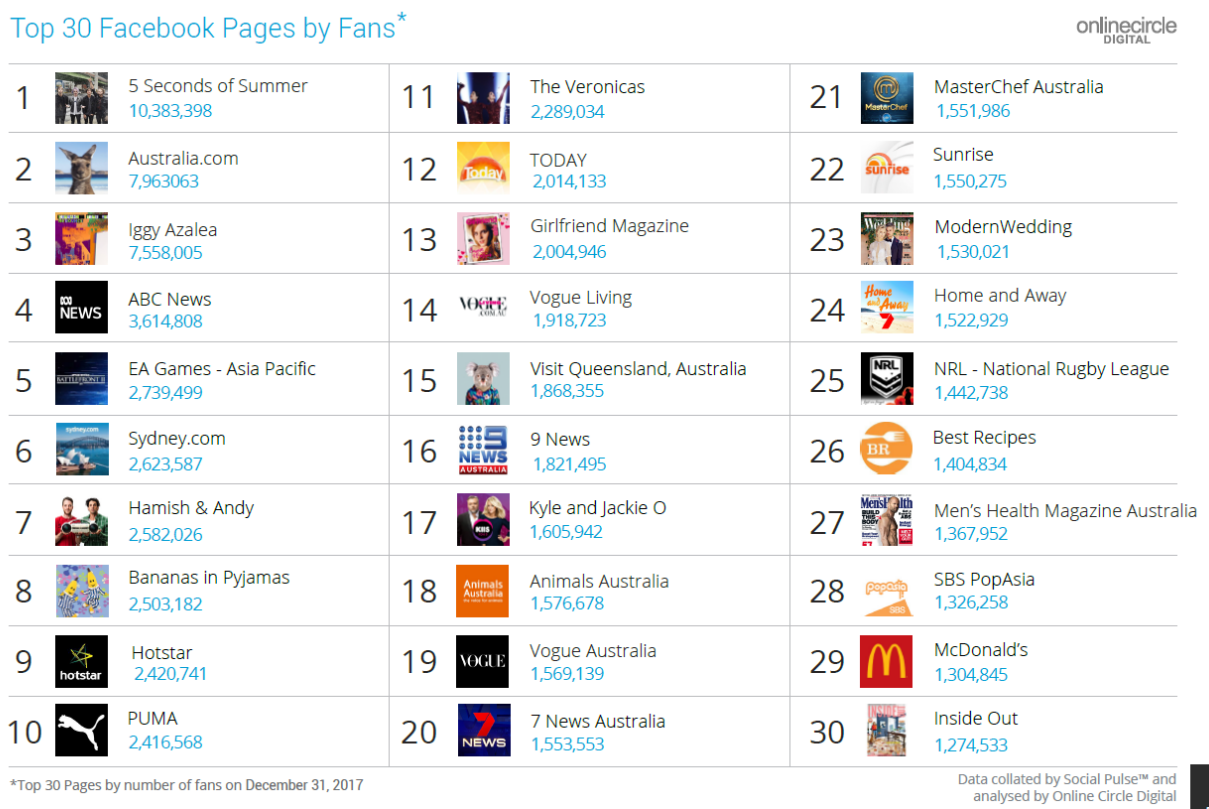
¹⁸ Read more at <http://www.adnews.com.au/news/google-s-300m-effort-to-assist-publishers#0tBmXETWCxYHJI0x.99>

what could arguably be characterised as token public relations gestures, such as the Facebook Journalism Project.¹⁹

While broadcasters like Nine continue to invest in quality content, including news and public interest journalism, it is becoming increasingly difficult to maintain existing sources of revenue and monetise that content in circumstances where a significant portion of the revenue is going to digital platforms aggregating the content. These impacts are not localised to news content, but to all of Nine’s content across each of its content pillars.

As demonstrated below, digital platforms such as Facebook and Twitter derive considerable benefits from the use of Nine’s content in terms of increased traffic and engagement on their platforms. The importance of the news content category to Google is evidenced through the prominence of a dedicated tab in Google search for Google News. Nine’s news and current affairs Facebook pages drive traffic to Facebook’s platform, even though Facebook does not remunerate Nine in relation to the news and current affairs content it produces. The Facebook pages for Nine’s *Today* and *9News* programs rank in the top 30 sites by fans (see figure 8 below²⁰).

Figure 8: Top 30 Facebook Pages by Fans, online circle



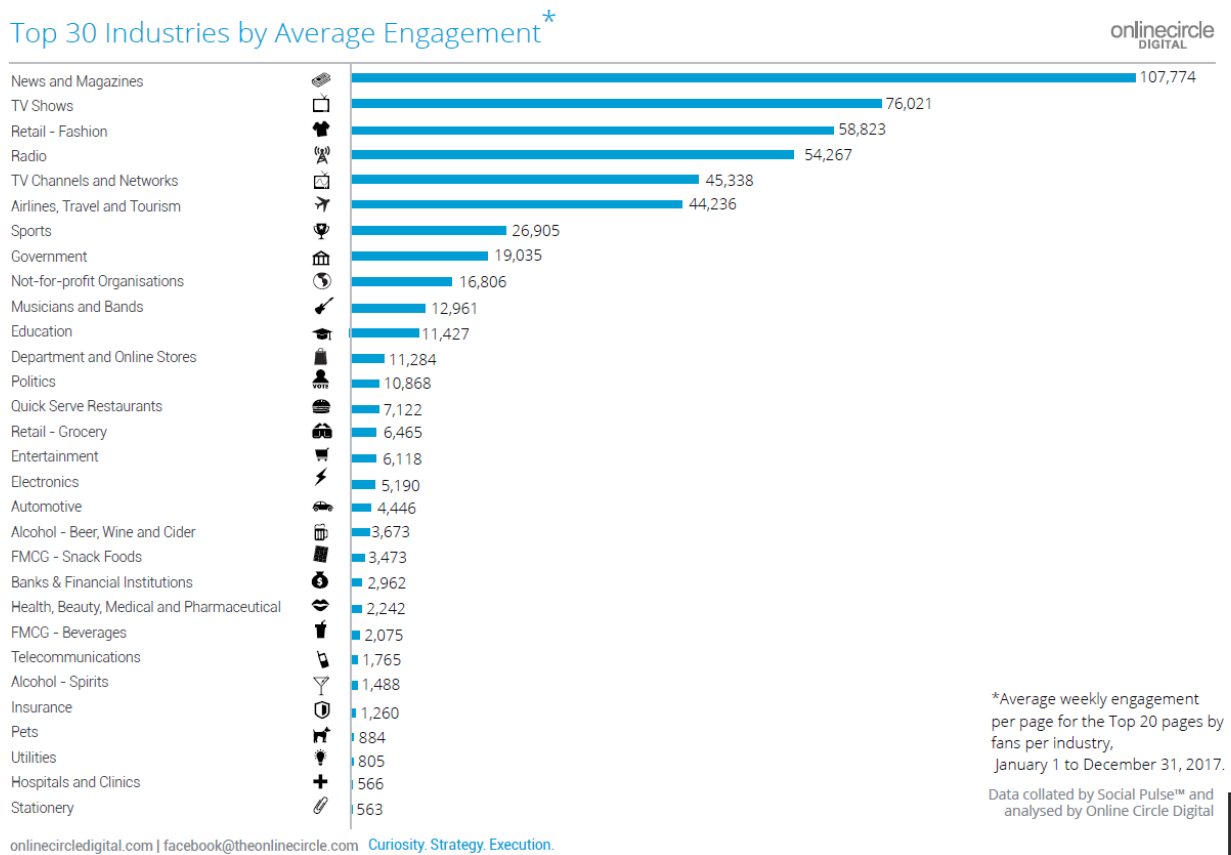
While it is difficult to find empirical data on the quantum that broadcaster and publisher content contributes to the success of digital platforms, a recent study by Online Circle researched the most

¹⁹ The Facebook Journalism Project has been “founded to connect and build better relationships with media organisations and supply tools and training to journalists”.

²⁰ <http://www.bandt.com.au/marketing/australias-top-facebook-pages-revealed>

popular topics and most popular pages on Facebook in 30 different categories. News and magazines, and TV shows were the top two industries by engagement (see figure 9).

Figure 9: Top 30 industries by engagement



Twitter

On any given night TV shows will be among the top trending Twitter conversations in Australia. Twitter has an editorial team (Twitter Moments) that curates the best TV moments on a nightly basis and serves media owners content via a specific tab in the app.

The adjacent screen shot was captured on March 21, 2018 at 9.34pm. The top four topics trending on Twitter were centred on television programs broadcast that evening. The screen shot labelled “The MAFS men were given a lesson after the boys’ night reveal” clicks through to a Twitter Moment hand- curated by Twitter’s local team.

Premium entertainment and news content is key to the conversations and engagement on these platforms, yet with their market power Nine is challenged with finding business models which fairly share the revenue generated from their vast platforms and our quality content.

6.6. Digital platforms are willing to pay for sport

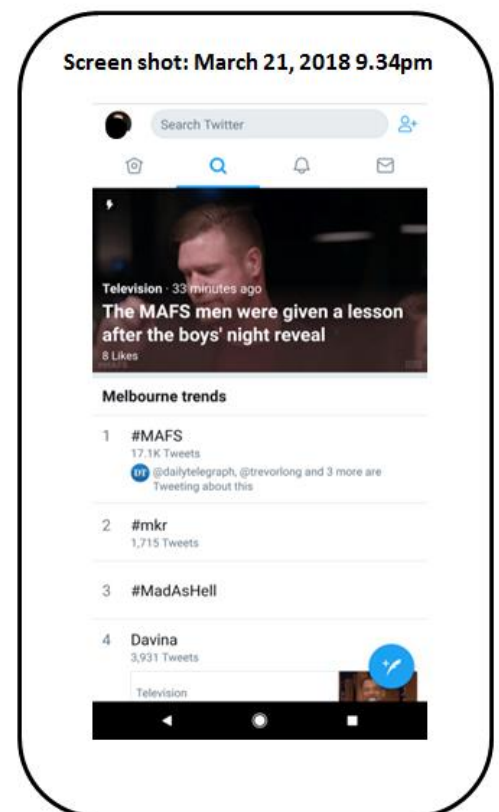
Interestingly digital platforms will and do pay for sport content. This is no more evident than in their growing appetite and willingness to pay for sporting rights, implicitly placing little or no value on other valuable content including news and entertainment.

For example, Facebook has publicly shared its intention to disrupt the sport-streaming industry.²¹ Dan Reed, the company’s head of global sports partnership, said recently, “Sports are inherently social, with the power to build and connect communities around the world. This aligns closely with our mission, and we feel Facebook is a natural home for sports content, including live games.”²²

Twitter has been active globally in sports rights acquisition. According to a recent report in *The Australian*, by mid-2016 Twitter had partnerships with 300 sporting organisations in 25 countries to show sports highlights and live streaming of sport.²³ In Australia, Twitter is live-streaming events including the 2017 Melbourne Cup and women’s rugby sevens tournaments, and it offered video highlights of the women’s Ashes cricket series.

This disruption is further compounded by the sporting organisations themselves working on different direct-to-consumer models.

Figure 10: Screenshot



²¹ <https://mashable.com/2017/02/13/facebook-live-sports-soccer/#aV1w8L6Vqmqx>

²² <https://qz.com/1069691/ipl-facebook-may-have-failed-with-its-0-6-billion-bid-for-cricket-but-this-is-only-the-beginning/>

²³ <https://www.theaustralian.com.au/sport/twitter-making-further-forays-into-live-sport/news-story/f89bfba3a737d16eaf9c08e7580d255c>

Until recently digital rights have been more of an annexure to the main broadcast rights which carried the production and content creation costs. However, as the “digital natives” become an increasing proportion of the viewing population, the need for cross-platform rights for media brands is increasing and the value of the production has to be brought into the entire equation. This is evidenced in Nine’s recently announced partnership with Tennis Australia whereby Nine acquired all platform rights, including mobile and digital.

6.7. New transaction costs

While digital platforms including Facebook, YouTube and Twitter provide an opportunity to promote programs to a wide network and for audiences to engage with the content and build a conversation around it, participation on these platforms has also led to new transaction costs.

The utilisation and workings of Google and Facebook’s algorithms have become a critical operation for all media operators. Nine expends considerable marketing budget on “boosting” its entertainment content in the Facebook newsfeed. (CIC)

Separately, Nine is investing in search engine optimisation (SEO) expertise to ensure that its news content is discoverable on Google. These costs are becoming a transaction cost of dealing with Google and Facebook, a cost of participation on their platforms, and another area where the media operators must compete on unequal footing.²⁴

The creation of social media content is itself becoming a significant transaction cost to Nine as a publisher. Social media is used for the promotion of our programming and digital products, competing against other broadcasters and media for viewers, ratings and website traffic. The market dynamics in social media mean that Nine is rewarded for material that has higher engagement, but this skews production towards unique social-only material that is tailored to users. Not only is Nine increasingly investing in social-only content for exclusive distribution via the platforms, but this also imparts considerable value to the platform itself that can use that content to drive traffic and engagement to its platform. One of the problems with this is that Nine is in direct competition with the platform for the same traffic and engagement, and ultimately advertising revenues. As noted earlier, Google and Facebook are incentivised to increase traffic to their own platforms and to keep users in their ecosystem.

Notwithstanding this dynamic, Nine’s social media teams conduct themselves more like content publishers than content promoters. Nine is building a team (CIC) to monitor conversations and engage viewers. This is almost indistinguishable from the roles of our production and news teams, the only difference being that Nine receives a direct commercial return for one and not the other.

The only way in which Nine is remunerated is if the user clicks through from Facebook or Google onto Nine’s owned and operated platforms. While Nine is “rewarded” within the Facebook ecosystem by attracting comments or shares, Nine is not rewarded in every case with referral traffic. In this equation Facebook is the net beneficiary, adding traffic and users to their platform as well as valuable user data. Through our marketing efforts the digital platforms are able to access a deep understanding of our viewers including their behaviours, preferences, interests, devices, contacts and locations.²⁵

²⁴ <https://www.theaustralian.com.au/business/media/abc-spends-up-to-hurt-online-media-rivals/news-story/fecc2a0a3491da43a4c4e9a3fd2fde25?memtype=anonymous>









²⁵ For more information on the data collected by Facebook see <https://www.facebook.com/policy>.

(CIC) Nine is commercially obliged to be present on social media as that is where our audiences engage with our content and have conversations. If Nine does not share its content through these channels there is a real risk of losing viewers. As demand for unique content on these platforms continues to grow, Nine is faced with the challenge of driving the conversations on social media with costly content, with the objective of driving referral traffic back to Nine’s platforms where it can be commercialised.

Nine invests in social-only content and has extensive teams optimising our content for feeds into Facebook. To comply with the laws of defamation and our duty of care to our talent and participants on our programs we must constantly monitor and moderate our social media presence.²⁶ This requires a great deal of investment in personnel. (CIC) Not only do we invest resources in producing the content, checking and moderating content, and optimising it for organic reach, Facebook has changed the algorithm, requiring continual staffing for maintenance, analysis and review of our strategy and content for performance.²⁷

When commissioning entertainment programs such as *The Block*, *Australian Ninja Warrior* and *The Voice*, budget is now required and set aside to make unique social media content. A decade ago it would not have been necessary for Nine to make this type of content that drives people to platforms such as Twitter and Facebook or increases Nine’s ability to be discovered on search. Social media platforms have become a new area of competition, measured in part by metrics relating to engagement of viewers (see for example Figure 11 below).

Figure 11: Engagement statistics for Nine programs

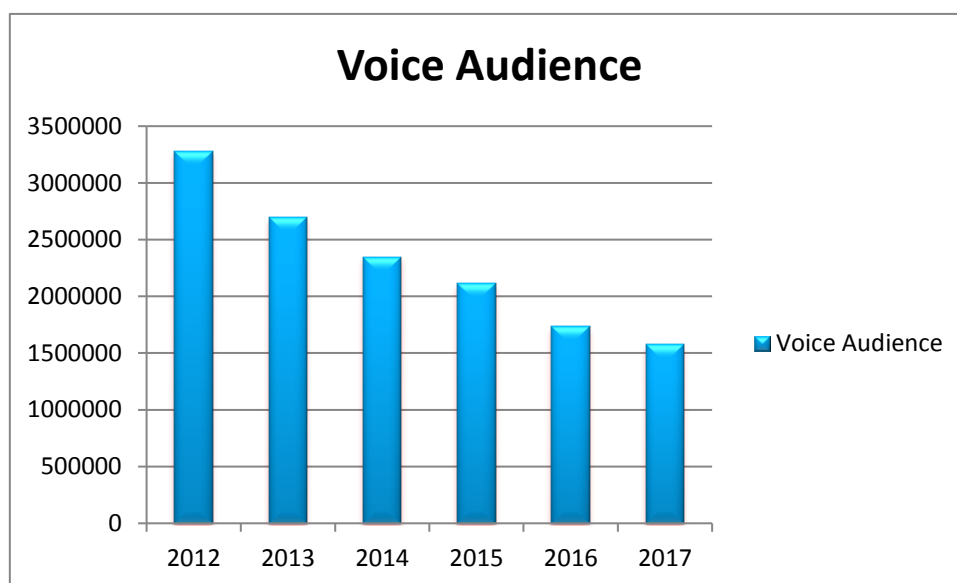
Program	Facebook Fans	Twitter Followers
Married at First Sight	 253,014 people like this  259,352 people follow this	50.4K
The Block	 631,593 people like this  591,761 people follow this	147K
The Voice	 1,012,750 people like this  964,641 people follow this	219.7K
Australian Ninja Warrior	 128,689 people like this  129,948 people follow this	2.2K

While these are very popular content categories that drive a large number of Australians to social media platforms to find out more and drive the conversations, this activity is not in fact leading to higher audience (See Figure 12 below) and is in fact providing a new cost to the business.

²⁶ See for example, ACCC v Allergy Pathway (No. 2) [2011] FCA 74

²⁷ For example, on 26 March, Nine was advised that Facebook was rolling out its prioritisation of “local news” to Australia – the impact of which is unknown. See <https://newsroom.fb.com/news/2018/03/news-feed-fyi-more-local-news-on-facebook-globally/>

Figure 12: *The Voice* Audience 2012 – 2017



Total Individuals Consolidated 28

Social media is also an important component of Nine’s sports offerings, and an ongoing cost centre. Nine supports its NRL broadcast with significant social media activity (CIC)

Ultimately these investments produce marginal revenue to the business, and under prevailing dynamics are driving traffic to social media platforms that can extract value from that traffic through data collection and advertising served on those platforms.

As the line between Nine as a publisher of premium content on digital platforms and a marketer of its content continues to blur, the challenge for the Commission is to determine whether the advantages the digital platforms receive from use of our content should attract a regulated solution to compel them to share the benefit.

(CIC)

7. Entrenching dominance in programmatic advertising

Key message

- Google and Facebook have unparalleled ubiquity and scale in the global and Australian advertising market.
- The share of the Australian advertising market spent online has almost doubled over the last five years and the majority of that growth has been captured by Facebook and Google – it is estimated that they jointly represent 85 cents in every digital advertising dollar.²⁸ It has been

²⁸ <https://www.theaustralian.com.au/opinion/google-facebook-and-amazon-blight-digital-landscape/news-story/9d8c540685a87d0def6ebc18befde483?login=1>

over five years since digital advertising overtook free-to-air television advertising spend, and the digital spend continues to grow (see Free TV submission).

- The importance of data in the digital advertising paradigm cannot be underestimated. Google and Facebook have a unique ability to collect user data that is of most value to advertisers, and in turn, attracts the highest premium. They are currently the dominant players in the big data market. As *The Economist* magazine recently noted in a report about Facebook, “[n]o other Western company apart from Google has such rich data.”²⁹
- (CIC)
- In addition to controlling the terms of participation, Google and Facebook are very active in industry bodies that are involved in standard-setting processes that deliver commercial benefits for them whilst disadvantaging competitors in the online advertising space.
- Finally and critically, Google is vertically integrated in the programmatic advertising supply chain with key assets on the supply and demand side. As a result of interoperability problems between Google and third-party services and Google’s practice of bundling services together, there are barriers to entry or expansion for competing providers.

7.1. Areas of market dominance

Google

Google exerts considerable market dominance through an extensive and broad market penetration of key products.

- **Search** through its ubiquitous Google search platform which acts as the algorithmic gateway to information and content on the internet;
- **Web-browsing** through its Google Chrome browser, currently estimated at 59% penetration in Australia;
- **Video streaming and advertising** through its YouTube platform, the largest advertising-funded video streaming platform in Australia, which has 1.5 billion monthly active users worldwide with 5.01 billion videos watched daily³⁰;
- **Various components of the ad tech stack**, including in the advertising auction and ad-serving technology supply chain (described in further detail below);
- **Third-party advertising inventory** through its Google Display Network;
- **Mobile telephone operating systems** via its Android system;
- **Search-related platforms** such as Google Finance, Google Books, Google Hotels, Google Shopping, Google News and Google Scholar.

In addition to these products, Google has a significant number of other key software applications and advertising technology products, including Gmail, ChromeOS (operating system), Google Maps, GooglePlay, GoogleDrive for cloud storage, Waze, Chromecast, as well as newer forms of technology

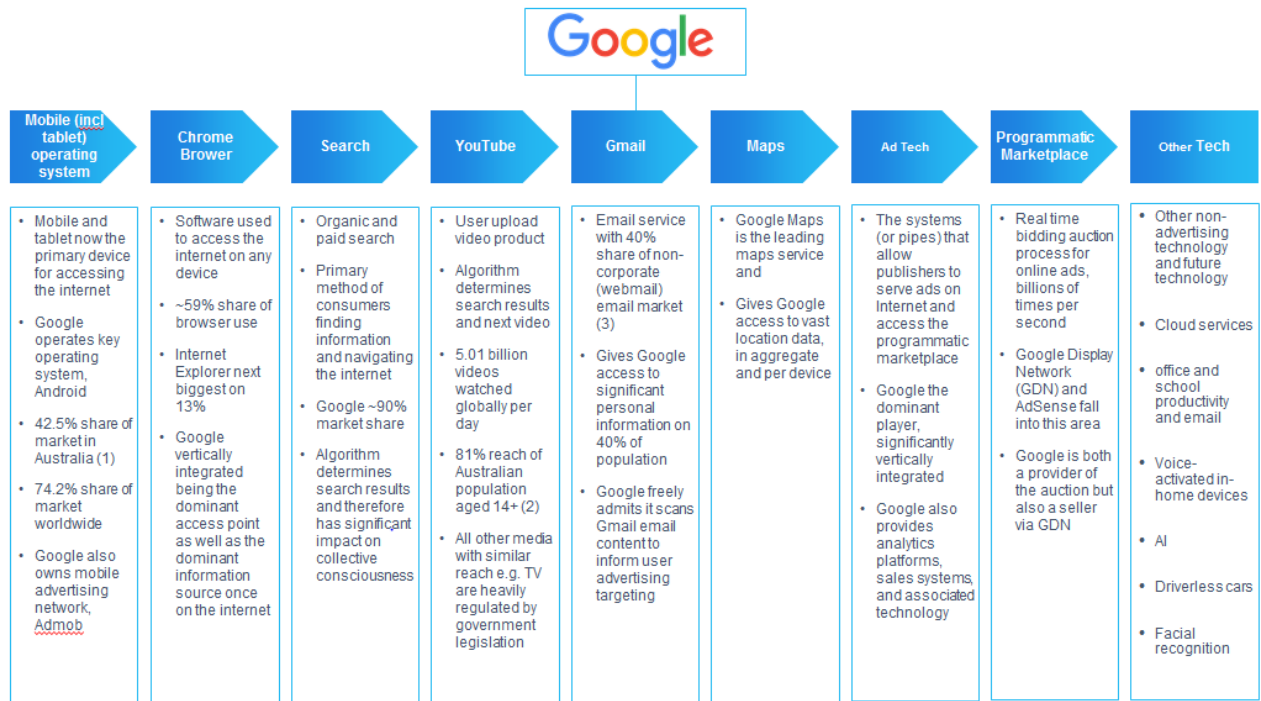
²⁹ The Economist, ‘The Facebook scandal could change politics as well as the internet’, 24 March 2018.

³⁰ <https://www.blogkens.com/blog/youtube-video-statistics-infographic/>

such as in-home and voice-activated applications, IoT (internet of things) applications, biometric technology (facial recognition), driverless cars and artificial intelligence.³¹

No other company, including Microsoft, has such scale and presence across the digital media ecosystem. Nor does any other company have a similar breadth of offerings or a similar level of vertical integration.

Figure 13: Google Product Set



(1) <http://gs.statcounter.com/os-market-share/mobile/worldwide>

(2) <http://gs.statcounter.com/os-market-share/mobile/Australia>

(3) Source: Nielsen Digital Ratings Monthly, February 2018

(4) <https://www.businessinsider.com.au/how-googles-new-email-app-might-affect-advertisers-2014-10>

Given the breadth and pervasiveness of Google’s products and services in digital media, Google enjoys considerable network effects, with each additional participant in their system providing cumulative network benefits. Its scale and ubiquity leads to it standardising digital practices in a manner that is commercially favourable to Google, and bundling and tying its various products and services. As other business have little choice but to participate with Google, these practices further entrench its dominance by creating high barriers to entry for any other new entrant.

In addition, as noted above, Google continues to acquire companies with emerging technology. Since its launch in 1998, Google has acquired more than 170 companies,³² including key entities such as YouTube, Waze, Motorola, Invite Media, Admeld and Doubleclick.

³¹ <https://www.google.com.au/about/products/>

³² <https://www.businessinsider.com.au/googles-ten-biggest-acquisitions-2015-1?r=US&IR=T>

Facebook

Facebook exerts market dominance through its ownership of key social media and networking services with extremely high levels of market penetration. The marketing firm Sensis has estimated that eight in ten Australians (79%) are using social media, with 95% of those Australians using Facebook.³³ Others estimate that around 15 million Australians are Facebook users,³⁴ with three-quarters of those users checking it daily.³⁵ Research from the United States shows that adults spend about 50 minutes a day on Facebook.³⁶ The time spent by users on the platform means that Facebook has unparalleled insight into its users. This allows Facebook to collect enormous volumes of data from its 2.2 billion users worldwide that can be used to build extremely sophisticated user profiles and segments that it can then sell to advertisers.

Facebook's level of penetration in social networking traffic and capture of digital advertising provide it with a defence to competition from new or existing rivals. Facebook's unrivalled audience reach and data capabilities create barriers to entry that are insurmountable, at least in the short to medium term, and absent some disruptive technological event or regulation may become permanently insurmountable. This monopoly is bolstered by powerful network effects, which gives Facebook a likely permanent advantage. Network effects arise when "each additional user of a networked system makes the entire system more valuable to all users of that system, who then become both more attracted to, and tied into, the network".

These barriers to entry are further enhanced by Facebook's practice of acquiring any would-be rivals, including those at early stage development, and by engaging in practices which deprive new and smaller businesses from gaining traction. Examples include Facebook's acquisition of Instagram, Whatsapp, Atlas³⁷, LiveRail³⁸ and Oculus VR.

Facebook is the world's biggest information-sharing site, and can control at an individual level what its two billion-plus users see on their Newsfeeds on a daily basis. Research in the United States suggests that two-thirds of adult Americans are getting their news from social media, with Facebook the dominant platform (with 45% of American adults receiving news from Facebook).³⁹ This means that Facebook acts as a virtual gateway to publisher content and information – including news – and has the capacity to affect the delivery and composition of news. Recent changes to the Newsfeed algorithm demonstrate the power of Facebook to affect news consumption. Further concerns regarding audience echo chambers, the propagation of "fake news", and the attendant effects on the democratic process have been the subject of widespread coverage through the election of President Trump and allegations of Russian interference with the election process.

Because of its sheer scale and ubiquity, the rules set by Facebook can have the effect of strengthening their market control, or requiring other market participants to change their behaviour in response, which often necessitates considerable resourcing and expense.

³³ https://www.sensis.com.au/asset/PDFdirectory/Sensis_Social_Media_Report_2017-Chapter-1.pdf

³⁴ <https://www.socialmedianews.com.au/social-media-statistics-australia-february-2018/>

³⁵ <https://www.theaustralian.com.au/business/technology/australia-is-obsessed-with-facebook-and-here-are-the-stats-to-prove-it/news-story/80a69a332a2e7833880385f91a758e96>

³⁶ <http://theconversation.com/facebook-cuts-back-on-news-to-give-you-more-time-with-advertisers-90053>

³⁷ For more information about Atlas see <http://adage.com/article/digitalnext/facebook-s-atlas-means-brands-agencies/295293/>

³⁸ For more information about LiveRail see <https://techcrunch.com/2014/07/02/facebook-liverail/>

³⁹ <https://www.reuters.com/article/us-usa-internet-socialmedia/two-thirds-of-american-adults-get-news-from-social-media-survey-idUSKCN1BJ2A8>

As already noted, Facebook acts as a mass repository of consumer behavioural data, and the risks of this have been brought to bear in the Cambridge Analytica controversy. Claims that Facebook collects shadow profiles on non-users without their consent is another source of concern in relation to Facebook's data collection practices.⁴⁰ It is at least apparent that more transparency is required.

7.2. The importance and value of data

The importance of data in the digital advertising paradigm cannot be underestimated. Programmatic advertising is growing exponentially, with Nielsen suggesting that two-thirds of Australia's digital advertising inventory across all devices is now bought through programmatic or ad network services.⁴¹

Data is the new currency in the advertising market that allows the creation of audience segments to enable targeted advertising and can be sold to advertisers for a premium or used to capture a significant share of advertiser budgets. Stratified data about audience interests and habits allows those supplying advertising to better monetise audiences, and makes a direct contribution to the revenues of those that have richer data about their audience. Data is also a key tool for content creators to develop better content, which in turn should drive better content and, in theory, better advertising returns for content creators.

Different types of data have different value to advertisers. For example, while basic demographic data about gender and age can provide some insights into consumer behaviour, it is a relatively blunt tool in the data environment. Other data, on people's attitudes, lifestyle, interests, behaviour and intention, is more valuable as it can be used to build sophisticated profiles of user preferences and intentions. When this data is coupled with other information, for example demographics, location or transaction data, it facilitates sophisticated audience profiling.

Due to their scale and ubiquity, Google and Facebook have an unparalleled ability to collect rich user data that is of most value to advertisers, and in turn attracts the highest premium. They are the dominant players in the big data market and the major beneficiaries of the rising importance of data

As the gateway to the consumer utility of Search, Google can collect rich data on consumer interests and intent. For example, Google's data on its users can provide predictive information on who is intending to purchase a particular good or service, like a coffee machine. With a 90% share of the search market in Australia, no other digital platform has comparable insights into consumer intent. This "intent data" is the highest quality available in the data hierarchy because it tells advertisers who is most likely to purchase their products.

Another key source of data is Google Maps. Google Maps is the leading maps service and gives Google access to a vast amount of user location data. Location data is valuable as it allows advertisers to determine where a person lives and spends their time, and allows advertisers to serve interest-relevant or location-specific advertising to that person. Through Google Maps, Google can determine:

- where a person lives based on their phone's location overnight;
- a person's interests based on the places visited or searched for directions to, such as sporting stadiums, restaurants, venues, etc;

⁴⁰ <https://spideroak.com/articles/facebook-shadow-profiles-a-profile-of-you-that-you-never-created/>

⁴¹ <http://www.nielsen.com/au/en/insights/news/2017/australia-digital-ads-in-2016.html>

- a person’s habits based on the places they have visited frequently including workplace (and professional interests), and places they have spent their time on weekends, such as supermarkets or shopping centres visited.

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Google’s reach into modern society extends into schools, through educational product development and marketing including its products Google Classroom⁴² and G Suite for Education⁴³. In the United States, more than half the nation’s primary and secondary school students – more than 30 million children – use Google education apps like Gmail and Docs. Chromebooks, Google-powered laptops, account for more than half the mobile devices shipped to schools.⁴⁴ School kids are required to log into the Google Classroom, which means Google is able to build profiles of people from a young age, likely capturing their cognitive abilities, subject interests, etc, and continue to build upon those profiles with search history and, video viewing interests on YouTube, etc.

The penetration by Google into the school ground has led to allegations that Google is collecting data about students and tracking their browser habits.⁴⁵ In April 2017, the Electronic Frontier Foundation reported on the widespread use of low-cost Chromebooks in US schools, enabling the mass collection and storage of information on children without the consent of their parents or the understanding of school administrators. Their investigation “found that educational technology services often collect far more information on kids than is necessary and store this information indefinitely”, tying personally identifying information (including names and birthdays) with children’s “browsing history, search terms, location data, contact lists, and behavioural information.”⁴⁶

Facebook also collects a vast amount of data on its users, their attitudes, political and religious beliefs, lifestyle, family status, financial and employment status, and online and offline behaviour and interests. This data is used to build sophisticated data segments that are sold to advertisers who want to target these audiences. Attached at Appendix B are screenshots of the highly stratified segments that Facebook offers to advertisers, which include categories of interests and user details such as US politics, TV comedies, multicultural affinities, away from home town, new job or new relationship. For example, if an advertiser wished to target women aged 25 to 35, away from family, in a long-distance relationship, interested in reality TV shows, and with a Spanish-dominant Hispanic multicultural affinity, that is a segment Facebook can offer (see Appendix B).

The recent case of misuse of data by Cambridge Analytica shows the sophisticated audience modelling that can be derived from Facebook data to create personality and psychographic information, including political beliefs and voting habits. It also shows the lack of regulation over Facebook’s data collection and use, with serious consequences for users’ data security and privacy. Most recently, Facebook is facing a class action lawsuit over its use of facial recognition technology.⁴⁷

⁴² https://edu.google.com/k-12-solutions/classroom/?modal_active=none

⁴³ https://edu.google.com/k-12-solutions/g-suite/?modal_active=none

⁴⁴ <https://www.nytimes.com/2017/05/13/technology/google-education-chromebooks-schools.html>

⁴⁵ See for example, <https://www.theguardian.com/technology/2015/dec/02/google-eff-ftc-privacy-chromebook-gmail-spying-students>; <https://www.eff.org/deeplinks/2016/12/effs-work-student-privacy>

⁴⁶ <https://appleinsider.com/articles/17/04/19/eff-google-chromebook-is-still-spying-on-grade-school-students>

⁴⁷ <http://www.bbc.com/news/technology-43792125>

As noted above, the scale of Facebook's data collection is enormous. Some 15 million people in Australia are Facebook users (about 95% of those Australians using social media⁴⁸), with a total global user network over 2 billion. The average time spent on FB is 12.5 hours a week in Australia⁴⁹, and while those users are logged in, Facebook is collecting information about user behaviours and interests, where they are, what they like, and what type of content they are consuming.

No other publisher can offer a targeted audience with comparable reach. For example, Facebook has significant depth-of-audience data and reach which allows advertisers to precisely define an audience using the vast amounts of this data, and cap the frequency of their advertisement to serve the same user only once (or limited times) in order to achieve maximum reach of the Australian population for that audience segment. Publishers with competing inventory do not have a similar capacity to either (1) identify and target specific audiences with such precision due to lack of equivalent personal data or (2) achieve comparable reach of the Australian population of that audience segment.

Both Google and Facebook combine their data with data acquired from third parties in order to build sophisticated and stratified data segments, which they can then use to power their advertising products. Not only do they collect vast amounts of data from their own platforms, they also allow third-party data companies such as Quantum, Acxiom and Experian to match their vast data-sets with Facebook's audience and target advertising to those consumers.⁵⁰ Both Google and Facebook are actively expanding their capacity to obtain data on user transactions (see 6.4.3).

(CIC) Similarly, Facebook captures data on user consumption of publisher content that is published or shared on Facebook.

Both Google and Facebook restrict access to their data and deploy it only through their own ad tech products. As a result, they have an insurmountable data advantage that they have used to dominate the digital advertising industry. For example, Google bundles much of its data with its analytics platforms, and advertising technology products (such as its demand side platform and supply side platform), so that the only way to access that data is through Google's ad tech products. Google also prevents advertisers from porting Google-sourced data to campaigns on non-Google platforms, thus encouraging lock-in.

Facebook has also built up an unrivalled social media platform and data management system into a walled garden of data. The data protocols exercised by Facebook are not transparent – and it is not clear what Facebook does with consumer data, or whether there are adequate controls on data breaches. Although Facebook does have some settings that allow consumers to control what data can be used by advertisers for targeting ads, Facebook holds that user data and can use it to improve its products and services, and as Cambridge Analytica demonstrated, third parties can scrape that data without user consent. Also of concern is Facebook's alleged use of "shadow profiles" to build data profiles of people who are not users of Facebook's services.⁵¹

⁴⁸ <http://www.canberratimes.com.au/act-news/facebook-dominates-australians-use-of-social-media-report-20160530-gp726q.html>

⁴⁹ https://www.sensis.com.au/asset/PDFdirectory/Sensis_Social_Media_Report_2016.PDF

⁵⁰ <http://www.adnews.com.au/news/facebook-makes-data-deal-with-quantium-acxiom-and-experian-to-fuse-offline-and-online-data>

⁵¹ <https://www.theverge.com/2018/4/11/17225482/facebook-shadow-profiles-zuckerberg-congress-data-privacy>

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7.4. Setting standards for their own benefit

In addition to controlling the terms of participation, Google and Facebook are very active in industry bodies that are involved in standard-setting processes. These “standards” are more often than not introduced in a short time frame, not discussed in advance with publishers or other affected parties, and may be introduced without warning. This is the case even though the changes often require considerable recalibration and cost for other market participants and in some cases can make or break new entrants into the market or create winners and losers amongst existing players, depending on the protocols introduced. New protocols require market participants to change their behaviour in circumstances where there may be no genuine commercial rationale other than the promotion of Google/Facebook’s services (even though Google and Facebook will ostensibly provide justifications for the betterment of the internet ecosystem or users generally). This gives Google and Facebook a power of direction over the types of advertising products and services publishers must use, that is demonstrative of firms with market power.

Examples of standards introduced by Google and Facebook which have had a material effect on the way in which publishers engage with their audiences include:

- The new adblocking protocols used by Google’s Chrome web-browser, introduced by Google in the United States and Europe on the basis of forcing websites to comply with the Coalition for Better Ads’ (CBA) “better ads standards”.⁵² The CBA is a global coalition of digital media and Google is a major stakeholder. These changes by Google will stop all ads from serving on websites that do not comply with these standards when the consumer is using the Chrome browser. Google’s ads are all within the parameters of the CBA principles and will not be affected by the adblocking policy. However, the display of competitors’ ads may be blocked by the dominant browser and advertising revenue compromised. It is anticipated that Google will roll out the adblocking protocols in Australia shortly.
- Google is also introducing changes to the latest version of its Chrome browser which will block auto-play videos from playing on websites depending on an algorithm Google has developed that determines the user’s propensity for clicking into videos. These changes have a material effect on publisher websites, including Nine’s, that offer video content on auto-play within text articles. Without auto-play, users are less likely to view the video advertising. In contrast, Google’s video service, YouTube, is likely to be unaffected because YouTube’s users’ primary purpose for visiting the site is to view videos. As such, by Google’s self-created rules, they will allow auto-play (with pre-roll advertising) of videos on YouTube.
- Google’s introduction of Accelerated Mobile Pages (AMP), which are alternative versions of webpages using Google templates and code requirements in order to build stripped-down versions of websites, which improves speed of loading. This initiative encourages website owners to create new versions of its existing webpages using Google’s template. The Google template is very restrictive as to what display advertisements can be shown, and relies

⁵² See <https://www.betterads.org/standards/>

heavily on standardised banner ad units which also happen to be the core offering of Google's own Google Display Network and AdSense demand channels. While in theory AMP is voluntary, in reality publishers must use it if they don't want their search traffic to decline. Anecdotally, there have been reports suggesting that publisher pages are deprioritised in Google's search if they do not use AMP.⁵³ Google encourages publishers to use AMP by offering AMP pages the chance to appear on Google's "Top Stories" carousel, a feature that appears on the very top of the search results and features exclusively AMP-optimised content.⁵⁴

- Facebook has partnered with market research and measurement company Nielsen to create a standard for measuring whether an advertisement served to a consumer reached a person in the advertiser's target age and gender demographic. This measurement standard is called Nielsen Digital Ad Ratings (DAR). Nielsen uses declared age and gender data from Facebook log-ins as the basis for its measurement currency. Advertisers are increasingly moving ad budgets away from publishers whose data does not correlate closely with the Nielsen DAR data. Due to flaws in the Facebook data, Nine's and many other publisher data-sets do not correlate closely with Nielsen's DAR data (even though Nine uses 9Now log-in data where users self-declare their age and gender), and this is impacting on ad spend for those publishers.

As noted in the Free TV submission, publishers used to be forced to participate in Google's controversial First Click Free program, which was only wound back after many years of concerted lobbying by publishers. The recent changes to the Facebook Newsfeed algorithm discussed elsewhere in this submission (see for example at 6.4.2) is another example of unilateral changes made by a digital platform with a material impact on publishers.

Most recently, concerns have been expressed over Google's announcement in response to new General Data Protection Regulations (GDPR) that it will require publishers to take "extra steps" in obtaining their consent from users for the use of Google's ad services, and has asked to be a "co-controller" of data along with the publisher so it can determine how personal data will be processed.⁵⁵ Digiday has reported this to be "a commercial agenda that's being wrapped in a GDPR and privacy-language narrative, but it looks very much like large vendors seeking to steal ground".⁵⁶

In Nine's observation, there is a pattern of conduct that has emerged over time which involves both Google and Facebook making unilateral pronouncements of changes to standards or operating practices for the betterment of the open Internet, but arguably these pronouncements are in the guise of changes made for their own commercial benefit.

⁵³ <http://blog.chartbeat.com/2018/02/15/google-is-up-what-to-do-about-it/>;
https://digiday.com/media/google-using-search-clout-steer-publishers-use-amp/?utm_source=hs_email&utm_medium=email&utm_content=60726476&hsenc=p2ANqtz-98YwU6-nczwcelGzHVH1ZaNPnwe3TohGMO83OtWJss06NjViNAGerA9TLnyB9178ITE1KMvablcY5znKBwiESp3w&_hsmi=60726476

⁵⁴ <https://mumbrella.com.au/how-does-an-accelerated-mobile-page-work-498758>

⁵⁵ https://digiday.com/media/googles-gdpr-approach-raises-publisher-concerns/?utm_medium=email&utm_campaign=digidaydis&utm_source=daily&utm_content=180416

⁵⁶ https://digiday.com/media/googles-gdpr-approach-raises-publisher-concerns/?utm_medium=email&utm_campaign=digidaydis&utm_source=daily&utm_content=180416

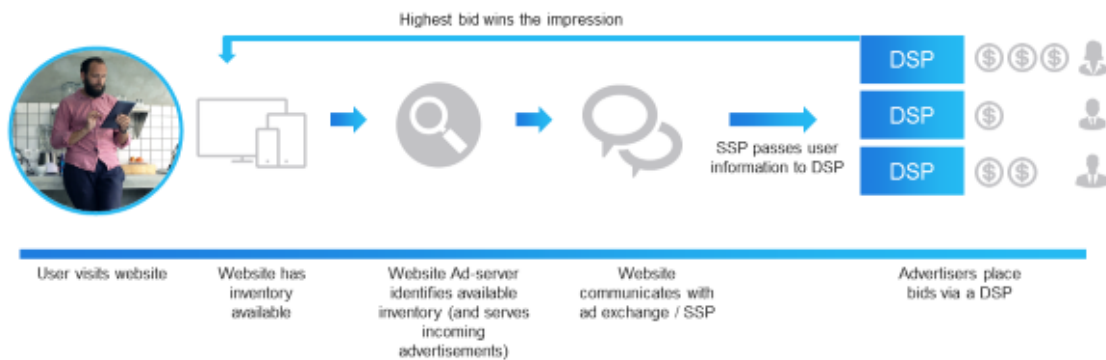
7.5. Vertical integration of Google in the technology stack for display advertising

Google has market dominance in various components of the programmatic advertising delivery chain, in which participants engage through their respective infrastructure products or their individual “tech stacks”.

The tech stack facilitates real time bidding (RTB) for programmatic advertising and is the communication and supply channel for advertising units made available by publishers. The bidding takes place in a virtual marketplace in real time, in which available ad units across multiple publishers are exchanged for advertising impressions on the basis of segmented audience metrics on the highest bid from advertisers seeking to place advertising.

The chain of events from the supply side occurs through publishers providing available inventory of digital advertising units, through an “ad server” to an “SSP” (supply side platform). The SSP connects with a virtual marketplace (or exchange) to notify advertisers of the available inventory and the characteristics of the publisher’s website (eg. site or domain name, page URL and other data points that may help to inform an advertiser’s decision to bid on that ad impression). These multiple auctions in real time are automated, occur in the space of milliseconds, and are facilitated by SSPs in an ad exchange.

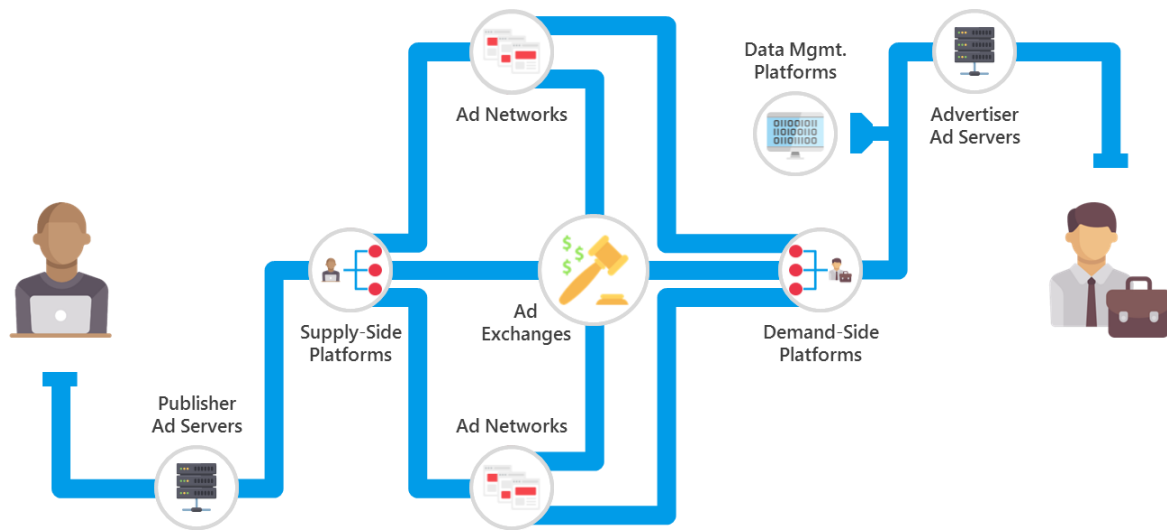
Figure 15: How programmatic advertising is sold



On the demand side, most advertisers will brief an agency in relation to campaigns, the allotted budget and desired demographic and characteristics. The agencies execute on the instructed campaign strategies to purchase a diversified audience (eg. based on audience segments and interests and viewability requirements) and operate proprietary trading desks which place bids via a DSP (demand side platform). Each of the agency trading desks may have several DSPs, but generally not all, due to commercial and operational reasons. In effect, the chosen DSP for each campaign allows the placing of bids by agencies via their trading desk.

Each of the DSPs and SSPs connect in a series of virtual marketplaces where the publishers’ digital inventory is uploaded and sold via complex algorithms which match publishers’ characteristics and inventory with advertiser requirements, in a real-time bidding process (see Figure 16 below).

Figure 16: Workflows in the programmatic advertising supply chain



Google products exist at multiple points of the ad tech stack, and those products have significant market share.

On the demand side, its DSP product is DBM (DoubleClick Bid Manager), formerly a DSP owned by Invite Media, subsequently acquired by Google and rebranded as DBM. The estimated market share of DBM in Australia is 41%⁵⁷, with the next highest DSP, One by AOL, having about a 21% share. Google's ownership of DBM creates a virtual bottleneck, controlling the access point for advertisers to the virtual marketplaces in which programmatic advertising is auctioned.

The DSP is assisted by a Data Management Platform, a service to collect, house and analyse data. Advertisers use that data to target ads to particular audiences. (Google's DMP is Doubleclick Audience Centre 360).

Google also operates DCM (DoubleClick Campaign Manager), one of the two largest advertiser ad server and rich media vendors in the world, which allows media buyers to set up, run, manage and report on media campaigns across different devices and through various platforms

On the supply side, Google's ad server is DFP (Double Click for Publishers) and its SSP is AdX (Double Click Ad Exchange), an SSP acquired by Google from Admeld in 2011 (for \$400 million) and subsequently built into the Google tech stack and rebranded as the Google Ad Exchange. In simple terms, publishers notify AdX of their digital inventory, which is then uploaded to the virtual exchange. AdX has an estimated market share of 56%, with the next highest virtual exchange, Appnexus, on 13%.⁵⁸ Google also offers a product called AdSense which allows small publishers and website owners to monetise ad placements on their website through Google Adwords. Google serves the highest bidding advertisement and provides the billing and fulfilment process to pay the website owner.⁵⁹ Nielsen has reported that Google's AdX + AdSense were involved in more ad impressions than any other tech vendor.⁶⁰

⁵⁷ <https://www.datanyze.com/market-share/dsp/Australia/doubleclick-bid-manager-market-share>

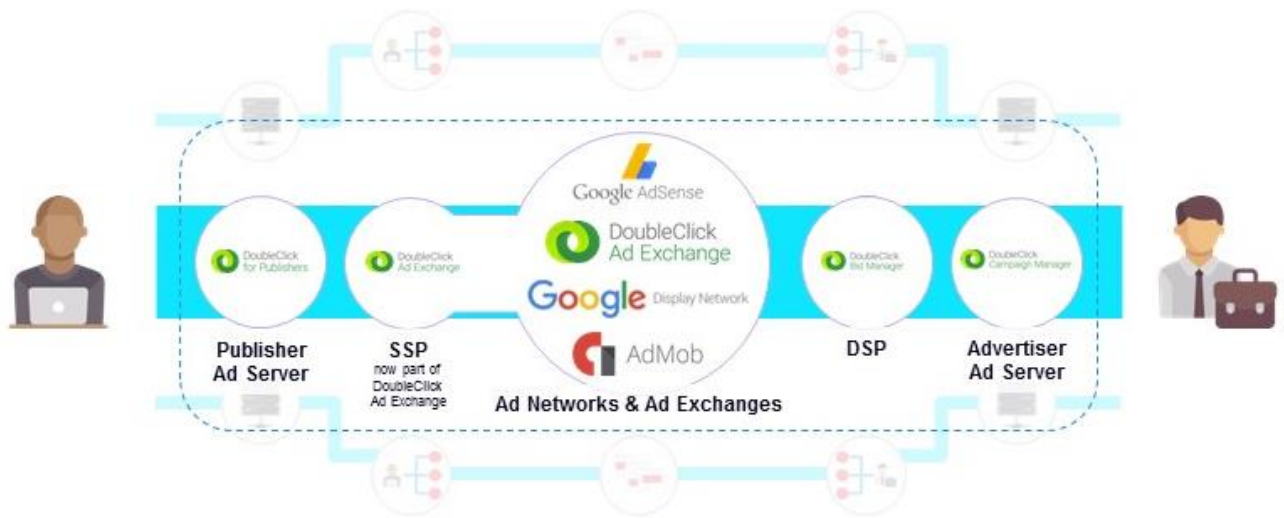
⁵⁸ <https://www.datanyze.com/market-share/ad-exchanges/Australia/doubleclick-market-share>

⁵⁹ For more information on AdSense see https://www.google.com/adsense/start/#/?modal_active=none and https://support.google.com/dfp_premium/answer/4599464?hl=en

⁶⁰ <http://www.nielsen.com/au/en/insights/news/2017/australia-digital-ads-in-2016.html>

Some websites instead of using a SSP technology to directly manage their ad sales will hire an Ad network which specialises in operating those technologies.

Figure 17: Google’s Ad Tech Stack



Accordingly, Google occupies various roles in the ad tech stack and operates on both supply and demand sides of the digital display virtual exchange with substantial market power at both ends. Its algorithms determine the bidding mechanics, as well as controlling the demand and supply side. This has led to reports of bundling of these products, such as media buyers being encouraged to migrate to Google’s demand-side platform, DBM, because of its ability to more easily access ad inventory from its exchange, AdX.⁶¹

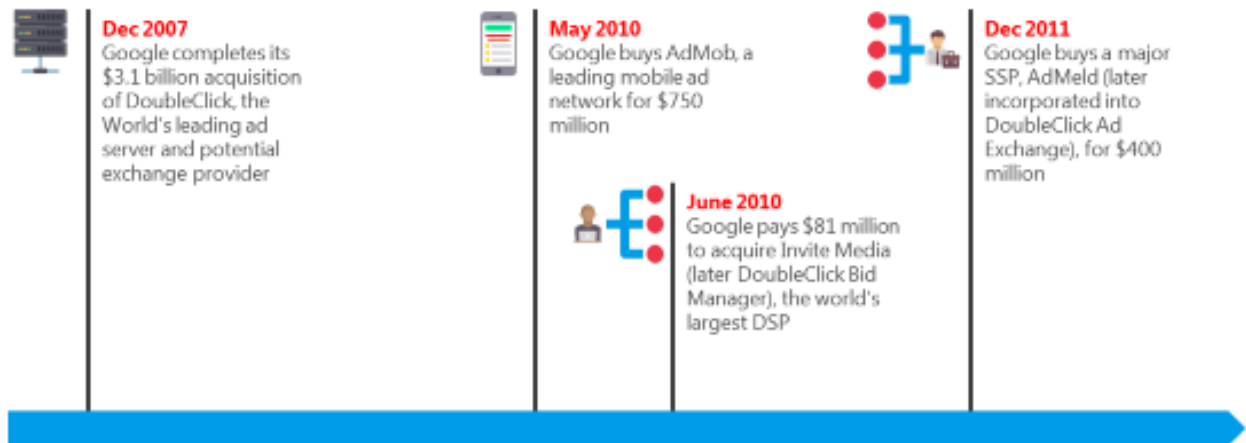
In addition to the multiple components of the programmatic advertising supply chain referred to above, Google also provides the following ad tech products in the online display advertising ecosystem:

- DS (DoubleClick Search), a component of AdWords that enables agencies, marketers and advertisers to display ads on Google’s search engine and other search engines.
- Active View, Google’s third-party verification service which measures ad viewability and fraud, and is one of the top three viewability measurement vendors in the world by market share.
- DoubleClick Creative Solutions which provides advertisers and agencies with design tools for display creatives.
- DoubleClick Audience Centre 360, a data management platform (DMP) to assist media buyers (advertisers and agencies) and publishers manage their data, build audience segments and push those segments into DSPs, SSPs or Ad Servers, or their Adwords and other Doubleclick accounts, to target ads to those audience segments.
- Google Analytics, one of the largest analytics providers in the world.

This vertical integration has arisen through a number of strategic acquisitions (see Figure 18 below).

⁶¹ <https://digiday.com/media/google-bundling-ad-tech-inventory-raising-anti-competitive-concerns/>

Figure 18: How Google dominated the ad tech pipeline

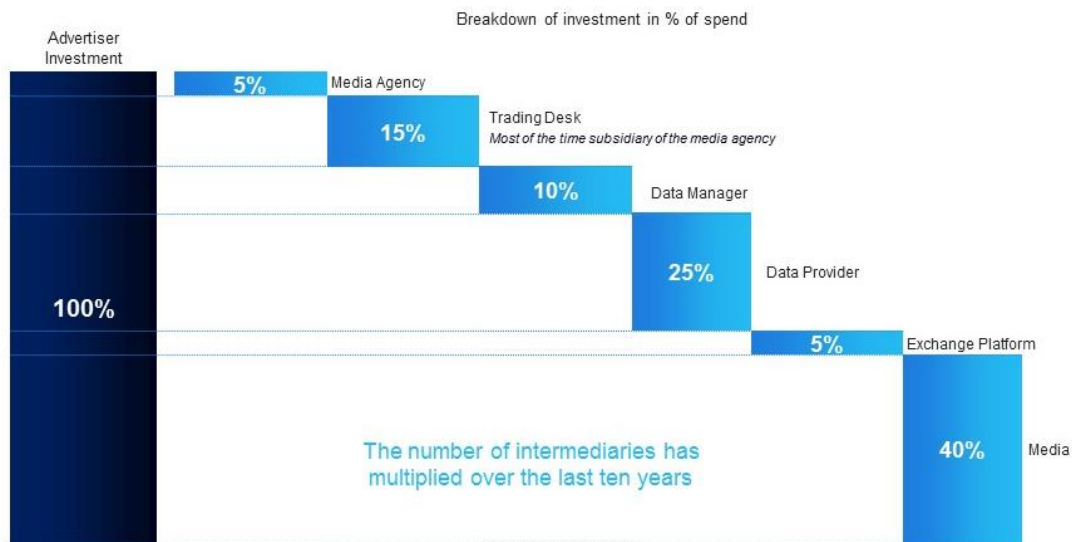


In addition, Google is a reseller of advertising inventory via its Google Display network as well as a key platform owner in YouTube. This means that Google is not only part of the auction process as auctioneer but is also a seller and a buyer. As noted earlier, Google limits access to YouTube advertising inventory through DBM by making DBM the exclusive DSP for YouTube. Given the size and success of YouTube, this drives participants to use DBM as their sole or primary DBM for video advertising.

Google's dominance in the ad tech stack is detrimental not only for competitors in the advertising supply chain but also for publishers and advertisers. The publisher-advertiser relationship is integral to the Internet because it subsidises the free content made available to the public. Ad tech providers are the intermediaries that allow this to happen. Once the market is dominated by one particular intermediary, that intermediary can capture all the benefits of the publisher-advertiser relationship for itself, by "clipping the ticket" or charging excessive rents in respect of the intermediate transactions. The inevitable result will be publishers unable to generate the revenue necessary to keep making content, and advertisers spending an escalating portion of their budget on fees. Both publishers and advertisers become beholden to the terms dictated by the dominant ad tech provider, with publisher revenues further declining.

The figures below were published in Echos, regarding the flow of transaction costs in the online advertising market.

Figure 19: Online Advertising Spend Distribution



Source: lesechos.fr, November 2016

7.6. Interoperability within the technology stack

Through its market penetration within the advertising supply chain, Google is able to exert considerable market power at multiple levels. Google’s products are designed to speak to each other and are optimised to enable a seamless transaction between supply-side and demand-side platforms.

While it is possible to engage third-party components in the ad tech stack, they are intrinsically reliant on the quality of their connection to the SSP or DSP (whichever is relevant) in order to facilitate the ad exchange transaction. The interoperability of third-party components with Google components is poorer than for Google-to-Google software. By its own advertising, Google says that: “DoubleClick Ad Exchange gives you the most flexible controls, powered by rules-based inventory management. If you use DoubleClick for Publishers, you can also set up those controls to auto-sync with Ad Exchange”.⁶² The use of third-party components can also limit access to advertisers and agencies on the supply side, since the SSP enables access to the ad exchange and to buyers. Again, Google’s own publications indicate that: “Ad Exchange is the only exchange offering access to the full demand of Google AdWords”, and “Only DoubleClick Ad Exchange connects you to millions of Google AdWords advertisers, plus a worldwide pool of top networks, trading desks and DSPs”, and that AdX will “[i]ncrease competition for every impression with unparalleled global demand”. For these reasons, many publishers have migrated from third-party SSPs to Google’s SSP – AdX.

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7.7. Potential monopolistic behaviour within the programmatic advertising supply chain

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⁶² <https://www.doubleclickbygoogle.com/solutions/revenue-management/ad-exchange/>

7.7.2. Bundling of services

Both Google and Facebook bundle access to their critical ad inventory with their digital advertising tools. By tying their advertising technologies to these assets – and to each other – they have attracted a disproportionate share of the buyers and sellers in market to their advertising stack, making themselves fundamentally impossible to avoid in this market which allows them to extract the kind of concessions and profits over advertising transactions that only monopolies can enjoy. Publishers, advertisers and competing ad tech tools that need to connect with Google’s platforms have little choice but to acquiesce.

As noted, Google is the operator of the largest ad exchange/SSP – AdX. It also operates the leading DSP, DBM, which has approximately a 41% market share, and all the major Australian agencies (except Group M) use DBM. Google has the capacity to compel some participants to use AdX and DBM together, which could operate to limit competition for the provision of both exchange/SSP and DSP services. External reports suggest media buyers have reported that Google is using its influence to get them to use DBM by using AdX as leverage, and is also bundling other ad tech components together, such as Google Audience 360 and Adwords.⁶³

Other practices to effectively force participants to use bundled solutions arise at multiple levels of the ad tech stack. For example:

- Google only permit their AdWords demand across the Google Ad Exchange. This forces publishers to use the Google Ad Exchange if they want to access Ad Words demand – which is significant.
- DBM is the only DSP that Google allow to buy YouTube inventory – effectively forcing advertisers to use their DSP if they want to access the largest supply of video ad inventory in the world.
- Google does not allow the Google Ad Exchange to work across any video inventory where a broadcaster uses a third-party server-side ad insertion technology. Publishers and broadcasters in the tech stack have to use Google’s own server-side ad insertion technology to benefit from demand coming through the Google Ad Exchange.

Prompted by a parliamentary committee, Israel’s Antitrust Authority has begun examining the implications of Google’s dominance in the Internet advertising market as a possible restraint of trade, following a complaint made by video advertising platform Artimedia.⁶⁴

Other practices evidencing Google’s control of the ad tech supply chain include the following:

- It is believed that DBM users can also access Google data for targeting in the DSP. Google does not make this data available to competing DSPs, and as previously noted in this submission, Google’s data is incredibly valuable to advertisers, making it a compelling reason for them to adopt DBM as their DSP.
- DBM users can access Google’s logged-in user device graph (captured from Gmail, Google Docs and other Google services that require a log-in) for targeting in the DSP. Google does not make this data available to competing DSPs.

⁶³ <https://digiday.com/media/google-bundling-ad-tech-inventory-raising-anti-competitive-concerns/>

⁶⁴ <https://www.haaretz.com/israel-news/israeli-antitrust-chief-says-facebook-google-in-her-crosshairs-1.5729883>; <http://www.breitbart.com/tech/2017/12/11/report-israels-antitrust-authority-looking-into-google-following-complaint/>

- Google bundles Active View into its DSP and Ad Servers so companies using this service can access free viewability measurement.

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Google also leverages its upstream presence in content distribution to favour its downstream ad tech products. It is widely known that Google limits access to advertising units on its online video platform YouTube to advertising placed by DBM. For advertisers seeking to place their advertising on YouTube, they must either use DBM as their DSP or engage an agency with a trading desk that uses DBM as a DSP. At present, YouTube has an estimated share of 75% of the online video platform services market – its next competitor, Vimeo, has 18%.⁶⁵ This has an obvious detriment to providers of competing DSPs and creates a barrier to entry for would-be entrants. The only possible commercial rationale, arguably, for this policy is to drive growth of its ad tech interests. If Google wanted to maximise returns from ad space sold on its user-facing products it would open up its inventory to as many intermediaries as possible to drive up prices through increased demand. Instead, Google funnels its inventory into its closed ad tech ecosystem. Google thus sacrifices potential profits from advertisements on its inventory for the sake of growing its ad tech position. The potential end result of this is an ability to generate additional revenues from the advertising passing through its tech stack, once the ad tech platform is effectively a monopoly – and ultimately net positive to Google.

[CIC]

7.7.3. Lack of transparency over algorithms

Both Google and Facebook’s advertising operations are based on complex algorithms of which there is little to no transparency. As noted earlier, search results and news feeds are assembled by algorithms that determine the websites or news items most likely to be relevant, and over which there is no transparency. Similarly, the RTB auctioning process is based on algorithms. Google and Facebook both have self-measurement systems which are also based on algorithms.

It is not clear how and where Google and Facebook change their algorithm, and whether they benefit from those changes. As long as there is no transparency, there will continue to be challenges of transparent accountability in big data and retention and collection of data.

Ultimately, transparency is a competition issue because in a competitive market transparency issues are not accommodated by customers. Unfortunately, due to Google’s market power and its position as a necessary intermediary for most participants in online advertising, publishers and advertisers now have little choice but to accept the status quo.

8. Consumer and public interest issues

Key message

- Despite delivering the same types of content as traditional media outlets, the digital platforms have so far not been subject to the same kind of content regulation. This not only creates an unequal playing field for the media companies competing for advertising revenue

⁶⁵ <https://www.datanyze.com/market-share/online-video/Australia/youtube-market-share>

but also leads to poor outcomes for consumers online, and the potential for a decline in the quality of news and information the public receives. As widely reported in the context of the recent US Presidential election and UK vote on Brexit, this may have dramatic consequences for our democracy and political processes.

8.1. Lack of transparency and regulation on digital platforms leads to bad outcomes for public interest journalism

Nine’s production and delivery of news content is regulated by a range of legislative and regulatory obligations, including the laws of defamation, contempt, trespass and codes of practice. For example, Nine’s news programs are required by the *Commercial Television Industry Code of Practice* to be accurate, fairly represent viewpoints,⁶⁶ and be presented fairly and impartially⁶⁷ (see section 4 Free TV submission).

As there are no regulated content controls apart from Google and Facebook’s own policies, there have been numerous instances in which inappropriate content has been viewed on Google and Facebook’s platforms. For example, violent content has been uploaded and shared via Facebook Live, including murders, suicides and decapitations. Google’s YouTube has been criticised for serving inappropriate content, including to children, via its search algorithm⁶⁸. During the election of President Trump, Facebook was involved in a foreign influence campaign from inauthentic accounts in Russia.

These examples demonstrate a deficit of care on digital platforms in respect of the material that is uploaded and shared, and a regulatory asymmetry between the regulated news content provided by Nine and that provided by Google and Facebook. This is evident in the practice of requiring content producers to warrant that the material they provide to Google and Facebook is appropriate, and not in breach of any law.⁶⁹ Nine employs a significant social media team in part to moderate its Facebook and other social media content on a 24-hour-day basis. By and large, Google and Facebook adopt a “no responsibility” approach and prefer to be considered “tech companies” rather than “media companies”, even though their algorithms are curating news and other content on the basis of their algorithmic relevance, and monetising that content. It is not without irony that Nine exercises careful diligence on its linear broadcast and digital platforms, and that diligence is also undertaken in circumstances where its content is distributed by Facebook and Google, even though Google and Facebook are monetising that content via delivery through their platforms.

Part of the problem is not only that neither Facebook nor Google are required to meet the same standards of trust or care as a regulated platform like Nine, but they have no incentive to do so. As noted, Facebook is incentivised to produce content that is most likely to keep a user reading so they can continue to serve advertising to that user, and this can tend to click bait, “fake news” and echo chamber content (as detailed below). They are not incentivised to produce quality news or ensure that their news is impartial or even accurate.

⁶⁶ Commercial Television Industry Code of Practice 2015, clause 3.3.1

⁶⁷ Commercial Television Industry Code of Practice 2015, clause 3.4.1

⁶⁸ See for example, <https://www.businessinsider.com.au/youtube-has-thousands-of-disturbing-videos-targeted-at-kids-report-2017-11?r=US&IR=T>; https://motherboard.vice.com/en_us/article/59jkda/youtube-porn-ads-pewdiepie-dude-perfect

⁶⁹ See for example, YouTube’s terms at clause 6B, <https://www.youtube.com/static?template=terms&gl=AU>

8.1.1. The rise of click bait

Facebook and Google serve considerable amounts of click bait. Click bait is used to describe a type of hyperlink on a webpage that is designed to provoke a visitor to click to continue reading, but often has little or nothing to do with the actual page. Click bait is often paid for by the advertiser, or generates income based on the number of clicks. Click bait detracts from public interest journalism because it damages the credibility of news and current affairs content. While media organisations like Nine take care in reporting news, other digital platforms do not necessarily have the same level of care, responsibility, or integrity. This material is saturating the market with lower quality journalism or “fast news” that bears no resemblance to the premium news content that is carefully researched, curated and presented by traditional news content providers like Nine.

In addition, readers are being lured by click bait, by clicking into websites that bear little or no relevance to the advertised headline, and this creates a sense of distrust in the news media.⁷⁰ Those readers are being used to drive a volume of traffic for advertising revenue, where both Google and Facebook benefit. Yet there is presently no regulatory intervention in click bait.

8.1.2. Fake news

Similarly, the issue of fake news has attracted widespread concern, not just for its damaging effect on credible journalism but for its potential ability to affect democratic processes. There is broad public concern about the reliability of online news and what media sources can be trusted. The latest Edelman trust barometer report⁷¹ found that 70% of respondents globally were concerned about fake news or false information. Almost 60% believed it was becoming harder to tell if news was created by a respected media organisation and 63% thought the average person could not distinguish “good journalism from rumour”.

These issues are greater than just the deleterious effect on good journalism. Facebook’s acknowledgement that foreign agents misused its platform to disseminate fake news to sway the 2017 US Presidential election is akin to the dissemination of propaganda that can be used to destabilise democratic processes. This is an issue of global concern that demonstrates the unregulated power of the digital platforms.

8.1.3. Echo chambers

Facebook’s Newsfeed is also based on an algorithm that serves news and other content to users based on their interests and behaviour. This is a mechanism to retain users on the Facebook platform. This creates an echo chamber or “filter bubble” effect, with users being served material that reflects an individual socio-political ideology, and can result in the repeated self-validation or entrenchment of that particular social-political ideology, given the lack of contrary views being provided to that user. There have been a number of criticisms of this practice, and questions have been raised as to whether it is good for pluralism or democracy if beliefs become more rigid and extreme, and users are less open to new ideas and even to facts.⁷² The recent changes to Facebook’s algorithm to prioritise feeds from a user’s community may further exacerbate this issue.

⁷⁰ <https://www.bigcommerce.com.au/ecommerce-answers/what-is-click-fraud-identify-and-prevent-fraudulent-clicks/>

⁷¹ <https://www.edelman.com/trust-barometer>

⁷² <https://www.theguardian.com/commentisfree/2017/nov/11/facebook-google-public-health-democracy>

8.2. Data security and privacy

The latest misuse of data by Cambridge Analytica is a clear demonstration of the data security and privacy problems that can arise from large-scale amassing of consumers' personal information. With so much reporting of this issue, which will no doubt be covered by many other submissions, Nine does not propose to address in detail the obvious issues of trust and data management that arise from this controversy. However, admissions made by Mark Zuckerberg⁷³ that data is collected even on people who have not signed up to Facebook (referred to as "shadow profiles"⁷⁴) demonstrate the scale of data harvesting conducted by the platform and raises serious issues around consent practices and privacy.

What will be most telling and should be of great interest to the Commission with regard to Facebook's market dominance is whether Facebook will continue to retain its market position following its reputational crisis. Assuming it does, this will demonstrate that there are no true alternatives with the network and reach for consumers to transfer to. Any other business which breaks the trust of its customers would suffer drastically if not fatally in market-share effects, but we predict that with no viable alternative Facebook will continue to be the dominant social media platform.

9. Conclusion

Nine has sought to provide the Commission with an overview of its media business and an insight, drawing on concrete examples, of how that business has been radically altered by the digital platforms.

Although the online environment has resulted in Nine having a far broader reach and in-depth engagement with its audience, its core revenue from advertising has suffered considerably as a result of the policies and practices of the digital platforms. As a customer of advertising technology, Nine has also observed the challenges faced by competing providers of this type of technology to maintain a viable presence in the market.

It is a matter for the Commission to investigate and determine whether any of the practices referred to in this submission may amount to breaches of Australian competition and consumer law, or demand other kinds of regulatory intervention. The Free TV submission sets out a number of recommendations in this regard which Nine adopts.

Nine would be pleased to answer any questions the Commission may have arising from this submission or to provide further information on any of the issues addressed.

⁷³ <https://www.thetimes.co.uk/article/mark-zuckerberg-in-facebook-shadow-profiles-row-mxzfhmh7z>

⁷⁴ <https://spideroak.com/articles/facebook-shadow-profiles-a-profile-of-you-that-you-never-created/>

Appendix A

Overview of Nine's business

Nine Entertainment Co. (ASX: NEC) is a leading Australian media and entertainment company. Its main business activities involve its free-to-air television business; digital publishing assets including its news and lifestyle verticals 9news.com.au and 9Honey; digital on-demand services including 9Now and Stan (50% JV); and television content production and distribution. In 2016/17 Nine turned over \$1.28 billion, consisting of \$1.1 billion in television revenue and \$150 million in digital revenue.

Nine has more than 3500 employees across seven main offices, of which a significant proportion are involved in content production and distribution: as journalists, camerapersons, producers and editors. Journalism remains a key anchor of Nine's business. While traditional news and current affairs journalism remains a key component of Nine's content offering, the other content pillars of sport, entertainment and lifestyle journalism also have strong cultural value for Australians, and are necessarily a part of Nine's content mix.

Each of Nine's business activities involves content at its core, with a particular focus on distribution of premium content across multiple platforms to reach and engage a broader audience. Nine has a unique combination of assets: linear television, on-demand (both subscription and advertiser-based), as well as a broadening range of digital publishing properties. Nine is no longer just a traditional linear television broadcast business. Our success in the future will depend on our ability to transform to a cross-platform business model.

Television

Nine operates five linear broadcast channels of content: 9Nine (HD and SD), 9GEM, 9GO!, 9Life and 9Extra. Premium local content is at the core of Nine's offering, across key content verticals of news, sport, lifestyle and entertainment. While it has become increasingly important for Nine to utilise all platforms to extract maximum value for that content, the free-to-air linear delivery platform remains a cornerstone of Nine's content distribution to audiences.

The success of Nine's free-to-air business is highly dependent on its content slate and programming performance. Flagship programs such as Nine's coverage of the State of Origin series and NRL premiership, *Nine News*, *Married at First Sight*, *Australian Ninja Warrior*, *60 Minutes*, *The Block*, *A Current Affair* and *The Voice*, are designed for mass appeal to drive audience by retaining and growing the number of viewers. By broadening its content base, Nine seeks to attract audiences of all types, and to maximise the ability to monetise its premium content. In contrast to the new digital platforms which are building their businesses on tailored and targeted advertising, broadcast television requires mass audiences in the millions to deliver a return on its hundreds of millions of dollars in content costs through a regulated limit on advertising inventory.

The delivery of high-quality program content in a brand-safe environment is an intrinsic part of Nine's value proposition. Viewers know and expect that content delivered through the trusted medium of television is curated for audience appeal, and that minimum standards of care are met through regulation and the standards that apply to television broadcasters. Unlike in the digital environment, all content broadcast on Nine's channels is classified for audience impact and scheduled at regulated times depending on its classification. Advertising is limited by maximum quotas set out in the *Commercial Television Industry Code of Practice*, and scheduling restrictions apply to certain categories of advertising.

Nine’s primary regional affiliate is Southern Cross Austereo for the broadcast of Nine’s metropolitan TV content into regional Queensland, Southern New South Wales and regional Victoria.

Digital

Under the umbrella of Nine.com.au as the gateway to Nine’s suite of digital content, Nine operates the satellite sites of 9Honey, 9Now, and 9news.com.au.

Nine is a 50% joint venture partner in Stan, a subscription video on demand (SVOD) platform. Stan currently has 800,000 active subscribers and is the leading local player in this growing sector.

Nine is also a majority stakeholder in PedestrianTV, a leading youth publishing business, and a majority stakeholder in CarAdvice, a leading publisher of online automotive editorial content in Australia.

Content Pillars

Nine has four main content pillars which it arranges its content strategy around. Nine’s content pillars inform investment decisions, scheduling choices and human resources.

News and current affairs

News and current affairs is central to Nine’s business and offering, an anchor content in the Nine schedule. Nine broadcasts 10.5 hours a day (weekdays) of news and current affairs on its primary channel. Its flagship news and current affairs programs *Today*, *60 Minutes*, *9News* and *A Current Affair* attract millions of viewers to the Nine broadcast platform.

Nine currently operates six metropolitan newsrooms along with 21 regional news bureaus, employing approximately [CIC] These newsrooms and bureaus produce the following weekday news services:

		Perth	Melbourne	Adelaide	Sydney	Darwin	Brisbane
Nine Early News	5.00am-5.30am	National broadcast					
Nine Morning News	11.30am-12.00pm	National broadcast excluding QLD					QLD Nine Morning News
Nine News Now	3.00pm-4.00pm	National broadcast					
Nine News Live	4.00pm-5.00pm	Perth Nine News Live	Melbourne Nine News Live	Adelaide Nine News Live	Sydney Nine News live		Brisbane* Nine News live
Nine News	6.00pm - 7.00pm	Perth Nine News	Melbourne Nine News	Adelaide Nine News	Sydney Nine News	Darwin Nine News	Brisbane Nine News

*Gold Coast residents receive the first 30 minutes only (until 4.30pm) and then the Gold Coast bulletin from 5.30pm to 6.00pm.

On Saturdays, Nine produces a 30-minute national bulletin broadcast at 5.00pm which supplements the six one hour metropolitan bulletins broadcast at 6.00pm for Queensland, Sydney, Melbourne, Adelaide, Perth and Darwin. On Sundays, Nine produces one-hour metropolitan bulletins broadcast at 6.00pm for Queensland, Sydney, Melbourne, Adelaide, Perth and Darwin, together with a 30-minute national bulletin at 5.00pm (except during NRL season when Sydney and Brisbane broadcast live NRL coverage at that time instead).

Nine also produces a Monday-to-Friday regional news service through its regional licensee NBN in Northern NSW. The regional news service is broadcast at 6.00 pm instead of the metropolitan service. The Northern NSW service is comprised of six different localised bulletins which each have separate windows for individual local news, sport and weather segments. These bulletins service the following regions: Newcastle + Hunter; Central Coast; Tamworth + North West; Mid North Coast; Northern Rivers; and the Gold Coast.

As part of its arrangement with Southern Cross Austereo, Nine also produces weekday regional news services in Southern NSW, Victoria and Queensland. As is the case with the regional Northern NSW service, individual localised bulletins are provided with separate windows for individual local news, sports and weather segments as follows:

SOUTHERN NSW	VICTORIA	QUEENSLAND
Canberra Wollongong/Illawarra Orange/Dubbo Wagga/Riverina	Ballarat Bendigo Albury/Shepparton Gippsland	Cairns Townsville Mackay Central QLD (Rockhampton) Wide Bay (Maryborough) Toowoomba/Darling Downs Sunshine Coast (Maroochydore)

As a result of the individual local windows provided in the regional news services, Nine produces 21 unique regional bulletins to Northern NSW, Southern NSW, Victoria and Queensland. These are broadcast at 6.00pm on weekdays instead of the metropolitan service.

Entertainment

Nine's TV business is a mix of news, entertainment, sports and lifestyle programming. They work off each other, providing cross-promotional opportunities and lead-ins to other shows. The way programs on Nine's schedule work together is important to the success of its television business. All of its content areas are affected by the digital media platforms.

Entertainment programming including *Australian Ninja Warrior*, *The Voice* and *The Block* is extremely important content for Nine, which faces the same challenges as news in monetising its value on these platforms.

Lifestyle

Nine Honey is a digital network of content aimed at Australian women, covering the categories of food, fashion, news, fitness, beauty, travel and celebrity.

9Honey is a leader when it comes to engaging women every month, with a reach of close to 2 million unique users (CIC)

High-quality, in-depth journalism that engages women requires an investment in human capital. (CIC) To this end, Nine has set about building a subscription business to target female audiences through the creation of *Future Women*. *Future Women* is set to influence the current and next generation of professional women with intelligent journalism, exclusive events and member offers.

Nine will attempt to place high-quality premium content behind a paywall, and through the calibre of people and investment in the platform will attempt to break the paradigm of a free-content environment for this target market.

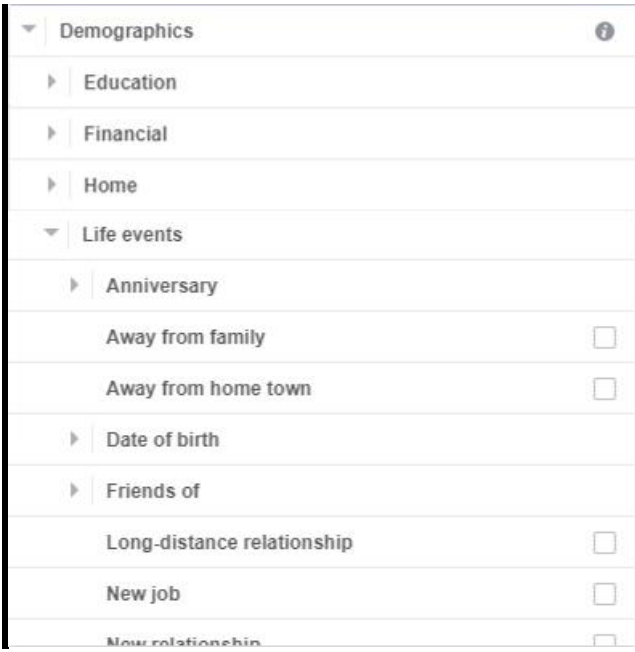
Sport

Sports is a key content pillar in Nine's broadcast schedule. Nine currently holds the broadcast rights for the NRL, netball, US Golf Masters and some surfing. Nine will hold the broadcast rights for tennis from 2020. We also hold joint digital rights for netball and the NRL.

As noted above (see 6.6), the sports broadcast model is being disrupted by new digital platforms and telecommunications companies. Sport is the new frontier of content on digital platforms.

For further information on Nine Entertainment Co. please see our latest annual report [here](#).

Appendix B: Facebook targeting screenshots

Demographics	 <p>A screenshot of the Facebook targeting interface for the 'Demographics' section. The menu is expanded, showing various categories with expandable arrows and checkboxes. The categories listed are: Demographics (with a help icon), Education, Financial, Home, Life events (expanded), Anniversary, Away from family (checkbox), Away from home town (checkbox), Date of birth, Friends of, Long-distance relationship (checkbox), New job (checkbox), and New relationship (checkbox).</p>
Interests	 <p>A screenshot of the Facebook targeting interface for the 'Interests' section. The menu is expanded, showing various categories with expandable arrows and checkboxes. The categories listed are: Demographics (with a help icon), Interests (with a help icon), Business and industry (checkbox), Entertainment (checkbox), Films, Games, Live events, Music, Reading, Television programme (expanded), TV chat shows (checkbox), TV comedies (checkbox), TV game shows (checkbox), TV reality shows (checkbox checked), Family and relationships (checkbox), Fitness and wellness (checkbox), Food and drink (checkbox), and Hobbies and activities (checkbox).</p>

Behaviours

- ▼ Behaviours ⓘ
 - ▶ Anniversary
 - ▶ Automotive
 - ▶ Consumer classification
 - ▶ Digital activities
 - ▶ Ex-pats
 - ▶ Financial
 - ▶ Job role
 - ▶ Mobile Device User
 - ▶ Mobile device user/device use time
 - ▶ More categories
- ▼ Multicultural affinity
 - African American (US)
 - Asian-American (US)
 - Hispanic (US - All)
 - Hispanic (US - Bilingual)
 - Hispanic (US - English dominant)
 - Hispanic (US - Spanish dominant)
- ▶ Purchase behavior
- ▶ Purchase behaviour