



QUAY INSIGHTS

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Canstralia: What Australia can learn from Canada's regulation of digital platforms

Australia and Canada have many similarities, including in their approaches to the regulation of digital platforms. The current difficulties Canada has experienced in putting in place such regulation provide some valuable lessons for Australia.

Similarities between Australia and Canada

As has been pointed out by media commentators many times, including most recently in *The Economist*,¹ Australia and Canada have many similarities. While Canada does not have the amazing beaches of Australia and Australia does not have a police force that is as elegantly attired as the Canadian Mounties, in other ways the countries are remarkably alike, with resource based economies, high rates of education and a high GDP per person. Another area in which the countries are similar is in the difficulties that each has had with imposing regulation to curb the market power of large digital platforms.

Requiring platforms to pay for news

Australia passed its world first Mandatory News Media Bargaining Code in 2021. The threat of being designated under this legislation, and thereby forced to negotiate with media companies under a mandatory scheme, encouraged both Google and Meta to reach voluntary deals to pay at least some Australian media companies for the news content that are used across various platforms.

It was a difficult journey to implement the Mandatory Code. Both Google and Meta lobbied hard to stop the necessary legislation being passed. In the final stages of the passage of the new law through Australia's parliament, Meta carried through with its threat to ban news content from its platforms for eight days. That resulted not only in news content being blocked but also the content of essential Government and community services, including sites providing health advice, at a time when the COVID-19 pandemic was at its peak and the government was seeking to provide vaccine information to Australians.

¹ *The Economist*, Australia and Canada are one economy – with one set of flaws, 1 June 2023, available here: <https://www.economist.com/business/2023/06/01/australia-and-canada-are-one-economy-with-one-set-of-flaws>

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Canada has faced an even greater degree of difficulty in passing its equivalent legislation, the Online News Act. That Act, like the Mandatory News Media Bargaining Code, is intended to force Google and Meta to pay for the news content that they use on their platforms. It was finally passed by the Canadian parliament on 23 June 2023, though has not yet come into effect. Meta has confirmed that it intends to cease providing news content on both Facebook and Instagram when the law commences. Google has stated that it is trying to negotiate with the Canadian government but is also threatening the same outcome. The threat from Google however has less force, as it would seem improbable that Google would impose such a ban on Google search, which would make that tool almost unusable, at a time when it is finally facing competition in the online search market from Microsoft's Bing, given the advent of ChatGPT.

What does the Canadian experience mean for Australia?

Many might think that the Canadian difficulties do not have any lessons for Australia, given our Mandatory Code is already in effect. But that is not the case. While the Mandatory Code has become law, no platforms have been designated under that legislation, meaning that the Code has not taken effect. As the Australian Treasury noted when it undertook its review of the Mandatory Code 12 months after the legislation took effect,² all of the agreements that Google and Meta have entered into to date are voluntary. The Treasury estimated that approximately 30 agreements had been entered into because of the implementation of the Mandatory Code. The terms of those voluntary agreements are confidential and therefore the Treasury was unable to assess how much was paid to different Australian media companies or any other conditions of those agreements. However, Meta confirmed to the Treasury that its agreements run for 3 years and evidence provided by Google and some media companies indicated that the Google agreements run for between 3 and 5 years.

Therefore, it would seem to be an inevitable conclusion – based on the behavior of Meta at the time the Mandatory Code was passed and the behavior of both digital platforms in Canada – that no extensions of those agreements will be entered into when they come to an end. It is also likely that any attempt to implement the Mandatory Code by designating one or both of the platforms at a future point in time will be met with the same response that the Canadian government is facing now.

It is also likely that both platforms will take a tough approach if the Australian Government takes up the recommendations made by the Australian Competition and Consumer Commission (ACCC) in September 2022, which were made in the context of the ACCC's ongoing five year Digital Platform Services Inquiry, to introduce a new regime of codes to regulate the anti-competitive practices of the larger digital platforms and to introduce new consumer protection laws.

What should the Australian government do?

It is no longer fashionable to quote the former Treasurer, Josh Frydenberg, but it is useful to remember that at the time of the Meta news ban in Australia, he stated that the Mandatory Code was “very much about Australia's sovereignty, this is about Australia making laws for Australians”.³

In other words, the attitudes of global digital platforms should not deter the Australian government from continuing the usual processes of considering, and making, appropriate laws for the protection of Australians. This should include not only implementing the recommendations of the ACCC from its

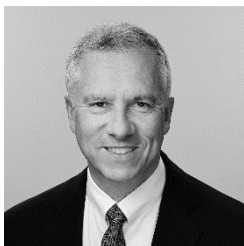
² The Treasury report is available here: <https://treasury.gov.au/publication/p2022-343549>

³ As quoted for example in this article on the Guardian Australia website: <https://www.theguardian.com/technology/2021/feb/20/australia-v-facebook-pm-claims-tech-giant-back-at-the-table-after-executives-apology>

Digital Platform Services Inquiry but also taking a more proactive and forward-looking approach in the area of digital markets. For example, we are now at the beginning of what is clearly the starting point of a revolution in the use of generative artificial intelligence. The Government should be looking to put in place the “rules of the road” for the use of that technology now – for example, by implementing appropriate strategies to promote competition, strengthen intellectual property rights, stop consumer harms and protect privacy.

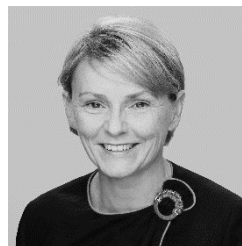
Acting quickly will allow Australia to avoid the pitfalls that are all too apparent in trying to remedy competition and other harms that have resulted from digital platforms building significant market power through operating in an unregulated manner.

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