Fair and Reasonable: How the Digital Markets Unit would support a sustainable and plural UK news ecosystem

The News Media Association (the "**NMA**") is the voice of UK national, regional, and local news media in all their print and digital forms - a £4 billion sector read by more than 47.2 million adults every month. Our members publish around 900 news media titles - from The Times, The Guardian, The Daily Telegraph and the Daily Mirror to the Manchester Evening News, Kent Messenger, and the Monmouthshire Beacon.

Summary

- **Due to the immense market power of 'must have' Big Tech platforms, UK news publishers are currently unable to negotiate fair and reasonable compensation for the value that their content brings to Google, and Meta's Facebook.**

- **Big Tech platforms benefit from publishers in a number of ways, including the value of advertising that is shown around news content, and the data that is obtained by platforms when users interact with that content. Trusted news content is worth an estimated £1 billion to Google and Meta annually, whilst the duopoly delivers less than £100 million in value to UK publishers.**

- **The presence of trusted news content on platforms also creates wider market expansion benefits, attracting and retaining users. It is doubtful that a major online platform such as a search engine could provide a popular and reliable service without trusted news.**

- **The Digital Markets, Competition and Consumers Bill (the "DMCCB") would empower the Digital Markets Unit (the "DMU") to require platforms with entrenched and substantial market power to trade on fair and reasonable terms with publishers: This would bring platforms to the table to agree a fair deal for the value of news content.**

- **Platforms argue that news content brings them little value, yet the new law would only ensure that they negotiate fair terms – if they believe that their platforms bring more value to publishers than vice versa, why not back the legislation and negotiate? It would make commercial sense for them to welcome DMU regulation and reap the benefits of negotiation. Instead, platforms have chosen to vociferously lobby against the Bill, and their efforts have given rise to several misrepresentations about the nature and impact of the legislation.**

- **The Bill is not intended as a 'silver bullet' that will 'save journalism', but it is a key step towards securing publishers' sustainability in a digital age. This regulation will help sustain investment in trusted journalism, and citizens will ultimately benefit by the strengthening of a plural and vibrant UK press that would otherwise be eroded by platform dominance.**

- **The impact of new technologies on the news industry is not 'creative destruction': Platforms do not create journalism and in fact rely on trusted content to monetise their services.**

- **The Bill would not create a 'link tax'. Deals would be based on a broad assessment of the value of copyrighted content to platforms, which does not encompass pure hyperlinking. Individual acts of hyperlinking are not the issue. Platforms have positioned themselves firmly between publishers and consumers, and profit immensely from this position.**

- **Far from having a negative impact on news production, payments for news content would help remove the short-term pressures that may incentivise the production of 'clickbait' content. The real threat to citizens' ability to access trusted news is platforms' irresponsible threats to restrict access to content.**

- **Similar measures in Australia have resulted in both large and small publishers striking valuable deals. In the UK, opponents of the Bill claim that it will create 'winners and losers', but this is precisely what the existing patchwork of piecemeal platform licensing agreements runs the risk of doing.**

- **Existing platform licensing agreements massively undervalue news content, whilst other news partnerships are a miniscule fraction of the value that publishers bring to platforms. These agreements and programmes do not ensure industry sustainability and can be withdrawn at any time.**

- **The regulator would not seek to pre-determine that platforms owe publishers money, or the value of any deal. Negotiations would account for the benefits that platforms bring to publishers, and the costs to platforms of hosting publisher content – this ensures that negotiations would be fair and reasonable.**

1. Introduction

1.1. Sustainable funding for press publishers matters to everyone in the UK (even the tiny minority who don't regularly read news content). The UK's national, regional, and local news media businesses provide a plurality of views on public interest news and contribute more resources to newsgathering than any other media channel.[1] News media brands reach well over 80 per cent of the UK adult population every month, shaping public debate and the news agenda across the media ecosystem. This original, professionally produced, and trusted journalism is indispensable to a thriving democratic society.

1.2. The digital age has created challenges for news media businesses as advertising models and consumer habits have changed, and Big Tech companies have hindered the ability of publishers to monetise their content. Yet a sustainable and plural press remains critical to our society. In fact, the rise of fake news and disinformation online has only made it more important.

1.3. If passed, the DMCCB would empower the DMU, a new regulator for the very largest digital firms holding substantial and entrenched market power which gives them a strategic position. Ofcom and the Competition and Markets Authority (the "**CMA**") have

[1] Mediatique/Department for Digital, Culture, Media, and Sport, '[Overview of recent dynamics in the UK press market]', April 2018

stated they consider that news publishers should be entitled to negotiate for fair and reasonable compensation for use of their content by Big Tech platforms under the new pro-competition regime.[2]

1.4. So central are online platforms to the dissemination of news content that – in work separate to the DMCCB - Ofcom is consulting on new media plurality powers to place new duties on online intermediaries, ensuring that UK citizens can access 'accurate information and a wide range of viewpoints' online.[3] Ofcom's powers already include media ownership rules restricting cross ownership of newspapers, but the regulator acknowledges that online platforms have increasing power over the curation, distribution, monetarisation, and discovery of news.

1.5. Due to their reliance on Big Tech's platforms to connect with consumers, and the dominant market position that this has given large platforms, news publishers are currently unable to negotiate fair and reasonable compensation for the value that their content brings. As UK citizens are increasingly using large platforms such as Google and Facebook to access news online, an equitable online market is now critical for publishers' sustainability.

1.6. Rather than choose to fairly compensate publishers for the value that their content brings to their platforms, Google and Meta have chosen to lobby ferociously against a measure that would help fund trusted journalism. These efforts have given rise to a range of misrepresentations about the impact of platforms on publishers' ability to monetise content, the value and importance of content to platforms, and the impact of requirements to negotiate over the value of news content.[4] [5] This paper seeks to dispel the myths around what should be an easily accepted principle: that platforms should trade with news publishers on fair and reasonable terms.

2. The value of news content to online platforms

2.1. Trusted news content creates significant value for Big Tech platforms such as Google and Facebook, and of course platforms do create some value for news publishers - but it would be wrong to assume that just because money is flowing both ways that both parties are getting a fair deal. Publishers are dependent on Google and Facebook to connect with consumers, giving Big Tech substantial bargaining power. This means publishers have no choice but to accept the non-existent, or at best wholly inadequate compensation offered by platforms. Therefore, platform market power allows them to capture the lion's share of the joint value created by the presence of news online, even though publishers create most of that value.

[2] Competition and Markets Authority and Ofcom, 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022

[3] Ofcom, 'Media plurality and online news', November 2022

[4] Institute of Economic Affairs, 'Breaking The News? Should digital platforms be required to fund news publishers?', February 2023; NERA Economic Consulting, 'Meta and the News: Assessing the Value of the Bargain', March 2023

2.2. Big Tech platforms benefit from publishers in several ways, the most obvious being the value of advertising that is shown around news content, and the data that is obtained by platforms when users interact with content. News content is particularly suitable for engaging users and selling advertising inventory, as it provides trusted, reliable content on a wide range of topics that is regularly updated: this means users engage regularly, providing new data, and this engagement can provide a broad range of indicators that are important for advertisers.

2.3. A study by Professor Matthew Elliot published by the NMA demonstrated that the presence of news content in the UK is worth between £525 million to £750 million to Google annually, and £155 million to Facebook.[6] The same study estimated that data derived from engagement with news content in the UK is worth £90 million to Google, and £80 million to Facebook.

2.4. The presence of trusted news content on platforms also creates wider market expansion benefits. Initially its presence attracts users, and then helps retain them, creating more opportunities for platforms to sell digital advertising inventory. After all, what is a search engine without reliable, regularly updated news? As UK citizens become more conscious and concerned about the presence of disinformation and misinformation online, it is increasingly imperative for platforms to be able to demonstrate the presence of trusted news sources that are the key antidote to fake news.

3. Online platform arguments disputing the value of news content

3.1. Platforms dispute the importance of news, despite 64 per cent of people using the internet to access news.[7] With Facebook and Google being the two highest reaching intermediary services used for accessing a variety of news sources.[8] In the spring lockdown of 2020, 37 per cent of online adults in Britain said they used Facebook to access news content, and 36 per cent used Google.

3.2. ***Google***

3.2.1. Google claims that news-related queries account for only two per cent of total queries on Google Search globally and that the revenue it receives from ads next to news-related queries was less than $20 million in 2020.[9] Yet Google does not explain what it classes as a 'news-related' query. It is likely this assertion is based on a very narrow interpretation of 'news-related' and may ignore much of the advertising that is shown around news content that is surfaced in response to search terms that are not obviously or directly news related.

[6] NMA/Professor Matthew Elliot, 'Value of News to Digital Platforms in the U.K.', May 2022
[7] Ofcom, 'News Consumption in the UK: 2022', July 2022
[8] Ofcom, 'Online Nation 2021 Report', June 2021
[9] Google, 'How Google supports journalism and the news industry', accessed May 2023; Digital, Culture, Media, and Sport Committee, 'Oral Evidence: Sustainability of local journalism', June 2022

3.2.2. In fact, Professor Elliot's study found that in the UK, 69 per cent of results of the most searched queries on Google surface news content, with 57 per cent of searches that display adverts also displaying news content.[10]

3.2.3. This demonstrates that although many search terms do not specifically mention news or a news source, news articles are surfaced as relevant results (and indeed users likely expect news articles to be surfaced). Research has found that 90 per cent of UK consumers report finding news stories of interest when looking for other information online: Clearly, news is central to Google results, even if a user doesn't type 'news' in the search bar.[11]

3.2.4. Opponents of payment for content also claim that: 'Advertisers are not particularly interested in news'.[12] In fact, the broad range of topics of interest to users covered by news publishers – including breaking news, sport, politics, entertainment, product reviews, travel, business, and of course local news – is critical to segmenting audiences for microtargeting of advertising. Much of the 'niche' or specialist content created by news publishers is particularly valuable, indicating the profession, age or buying intention of a user. This value is accentuated by the fact that users who engage with news content do so frequently, which provides Google and other platforms with up-to-date data.[13]

3.3. ***Meta***

3.3.1. Meta claims that news is worth little to Facebook. Yet 32 per cent of UK adults used Facebook to access news content in 2022, including 40 per cent of 16–24-year-olds.[14] Despite this, a Meta commissioned report claims that less than three per cent of what Facebook users see globally are posts with links to news content (in written evidence to the Digital, Culture, Media and Sport Committee (as it was then), Meta put the figure at around four per cent).[15] [16]

3.3.2. When considering the billions of posts and ads sold around such content, three to four per cent still represents a significant volume of posts. As observed by the Digital, Culture, Media, and Sport Select Committee in reaction to these claims that news makes up an insignificant portion of content on platforms: "Such points would seemingly lend support to the overall argument that the platforms need publishers far less than the publishers need them, and that, therefore, an imbalance of power exists between the two".[17]

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[10] NMA/Professor Matthew Elliot, 'Value of News to Digital Platforms in the U.K.', May 2022
[11] Value of News Survey (NMA/Professor Matthew Elliot), 'Value of News to Digital Platforms in the U.K.', May 2022
[12] Institute of Economic Affairs, 'Breaking The News? Should digital platforms be required to fund news publishers?', February 2023
[13] NMA/Professor Matthew Elliot, 'Value of News to Digital Platforms in the U.K.', May 2022
[14] Ofcom, 'News Consumption in the UK: 2022', July 2022
[15] NERA Economic Consulting, 'Meta and the News: Assessing the Value of the Bargain', March 2023
[16] Digital, Culture, Media, and Sport Committee, 'Meta submission to the DCMS Committee's Inquiry into the Sustainability of Local Journalism', April 2022
[17] Digital, Culture, Media, and Sport Committee, 'Sustainability of local journalism, Seventh Report of Session 2022-23', January 2023

3.3.3. It is also worth noting the 13 of the 20 top domains in Facebook's Most Widely Viewed Content Report are news sources.[18] Although Meta claim that the news domains in the top 20 account for only 0.5 per cent of all content in Facebook feeds, the high popularity of these domains is strong evidence of the market expansion benefits, with the presence of trusted news drawing users to Facebook where they view other forms of content, ensuring they stay on the platform. Meta's own description of what constitutes a 'high quality content' includes metrics such as 'timely and relevant', 'from a source you would trust', and 'genuinely interesting'.[19] Professionally produced news content clearly fits these criteria.

3.3.4. A NERA Consulting report, commissioned by Meta, claims: "There is no economic foundation for news publishers' contentions that Facebook is a 'must have' platform for publishers or that it possesses an 'imbalance of bargaining power' that would allow it to extract an unreasonable share of the value of the bargain".[20] Yet data from the CMA shows that 13 per cent of website traffic comes from Facebook.[21] This is more than sufficient for Meta to hold significant market power over any individual publisher. The report has sought to question why Meta should come to the table, whilst platforms such as Twitter and LinkedIn are not. The answer is that the volume of traffic publishers receive from these platforms is currently negligible, meaning these platforms do not hold significant market power over publishers.

4. The costs of online platforms to publishers

4.1. Platforms not only derive significant financial benefit from the presence of news content, but the nature of online news curation also costs publishers money. Publishers may have to optimise content for a particular platform, or even create tailored content that they may not otherwise have produced.

4.2. Particularly damaging is the effect of substitution, where users elect to only read a headline or article snippet within a platforms' ecosystem without clicking through to a publishers' website to read the full article. This means that publishers derive reduced benefit from a users' interaction with their content.

4.3. Disintermediation (or brand flattening) also reduces publishers' ability to monetise user interactions. Publishers have less ability to control how their content is presented and branded on large platforms, meaning users are less likely to recognise the sources that they find useful. This could make the user less likely to consider visiting a publisher's website directly where the publisher can sell advertising inventory or consider paying for a subscription.

4.4. These costs have a significant negative impact on publishers' sustainability, whilst tightening platforms' control of the user experience and bolstering their market power.

[18] Meta, 'Widely Viewed Content Report: What People See on Facebook, Q4 2022', accessed May 2023
[19] Meta, 'How do we find "high quality content"?', June 2023
[20] NERA Economic Consulting, 'Meta and the News: Assessing the Value of the Bargain', March 2023
[21] Competition and Markets Authority, 'Online platforms and digital advertising market study, Appendix S: the relationship between large digital platforms and publishers', July 2019

5. The value of platforms to news publishers

5.1. Platforms do provide value to publishers, providing a source of traffic to publishers who can then sell advertising around content viewed by users and obtain first party data. However, this value is significantly less than that derived by the platforms from publisher content. A study by Professor Annabelle Gawer published by the NMA estimates that Google search traffic is worth £75 million to UK publishers (against the estimated £605 million to £840 million that Google derives from the presence of news content), without accounting for the impact of substitution effects or disintermediation. [22]

5.2. A key reason for this low value is that direct traffic (where users go to a publishers' website directly) is more valuable than indirect traffic (where users reach news content via a search engine or social media platform). Meta's report states that referral traffic from Facebook increases traditional publishers' revenues by roughly 1.6 per cent to 2.4 per cent to on average.[23] This assertion is flawed because it takes no account of the fact that referral visitors spend only one-fifth of the time spent by direct visitors on a news website and generate only one-third of the revenue.

5.3. The Gawer study demonstrates that indirect visitors generate significantly less page views (over four times less for one large UK publisher) and spend significantly less time on news websites than direct visitors (a Pew study found it was three times less).[24] This means publishers have less opportunities to monetise these visits through selling digital advertising inventory, gaining first party data, or attempting to sell subscriptions.

5.4. It should be noted that there are costs to platforms in developing and maintaining the services on which news content is surfaced, but these costs are generally not specific to hosting news content (there may be some relatively small costs for developing services for specific types of publisher content, such as breaking news).

5.5. It is accepted that there is a market imbalance between platforms and publishers, and that platforms likely take the lion's share of the joint value created by the presence of news content.[25] This is why the DMCCB must, therefore, rebalance the relationship between platforms and publishers.

6. How the Digital Markets Unit would ensure fair and reasonable negotiations between platforms and publishers

6.1. The DMCCB would empower the DMU to set specific Conduct Requirements ("**CRs**") for firms designated as having 'strategic market status' ("**SMS**"). One of the three key objectives of the DMU would be 'fair trading', with one of the CR categories that the

[22] NMA/Professor Annabelle Gawer, 'Digital platforms are undermining the ability of news publishers to invest in quality journalism – we need to address the imbalance', May 2023
[23] NERA Economic Consulting, 'Meta and the News: Assessing the Value of the Bargain', March 2023
[24] NMA/Professor Annabelle Gawer, 'Digital platforms are undermining the ability of news publishers to invest in quality journalism – we need to address the imbalance', May 2023; Pew Research Centre, 'Audience Routes: Direct, Search & Facebook', March 2013
[25] Competition and Markets Authority, 'Online platforms and digital advertising market study, Appendix S: the relationship between large digital platforms and publishers', July 2019

regulator would be empowered to introduce being an obligation to 'trade on fair and reasonable terms'.[26]

6.2. Ofcom and the CMA state that news publishers would be entitled to negotiate for fair and reasonable compensation for use of their content by Big Tech platforms under the fair-trading objective.[27] It is likely that the DMU would set a firm-specific CR for Google Search and Facebook to negotiate with publishers over the value of news content. SMS firms would be required to negotiate with publishers to agree the sum of the incremental benefits of both parties generated from news content, less the sum of any incremental costs.[28]

6.3. Google and Facebook have argued that any calculation of joint value should account only for the value of digital advertising, but Ofcom and the CMA agree with publishers that a broader view should be taken (including the market expansion benefits, and substitution and disintermediation costs).[29]

6.4. The table below sets out the main categories of costs and benefits of hosting news content, identified by the CMA and Ofcom:

	Benefits	Costs
SMS Firms	**Direct Benefits** **Direct Advertising:** Revenue derived from ads placed around news content. **Data benefits:** Data derived from user interactions with news content can be used by the SMS firm to target advertising. **Market Expansion Benefits** Even when not directly interacted with, news content can attract and retain users, providing platforms with more opportunity for monetisation.	**Incremental costs of hosting content:** SMS firms have high sunk costs when developing and maintaining services, but most of these costs are not incremental to the cost of hosting news content and would therefore not be relevant to the joint value calculation. Some services may incur costs attributable to news content, such as breaking news which may require a specific method of indexing.
News Publishers	**Direct Benefits** **Direct Advertising:** When a user clicks through to a publishers' website from a link on a platform, the publisher can earn revenue from ads placed around content. **Other monetisation opportunities:** When content is used by SMS firms, publishers	**Curation cost:** There can be an incremental cost to publishers for providing and maintaining content in a format than can be used by platforms. **Content production:** Publishers may create online-only content due to their ability to reach platforms' users, which they may not otherwise have created.

[26] UK Parliament, 'Digital Markets, Competition and Consumers Bill [as introduced]', April 2023
[27] Competition and Markets Authority and Ofcom, 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022
[28] Competition and Markets Authority and Ofcom, 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022
[29] Competition and Markets Authority and Ofcom, 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022

	could also monetise it by selling subscriptions or through branded content. **Data benefits:** When a user clicks through to content from a platform, the publisher can obtain first party data. This can be combined with existing data and used to target ads more effectively. **<u>Market Expansion Benefits</u>** The presence of content on platforms could improve brand awareness and content discovery.	**Substitution effects:** Users may read a headline and snippet of an article in search results or on a social media platform but not click through to the article, meaning that the publisher is unable to monetise the interaction. If the content was not used in the platform, the user may have visited the publishers' website. **Disintermediation:** Publishers' control over the branding and presentation of their content is reduced on platforms. This can erode the value of a publishers' brand, particularly where it invests significant amounts in producing original and substantial content.

Table 1: Adapted from Competition and Markets Authority and Ofcom (Table 5.1), 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022

6.5. In the case that platforms persistently breach the requirement to negotiate with publishers, the DMU would be able to initiate a backstop Final Offer Mechanism (the "**FOM**") to resolve breaches in a timely manner.[30] The FOM would see both parties submit bids, and the DMU select the most reasonable bid. This form of 'final offer arbitration' incentivises reasonable bids and ensures the regulator does not have to expend significant resources to calculate its own figure (and its presence would be key to incentivising platforms to negotiate a settlement much earlier).

6.6. It is important to note that negotiations would account for the benefits that platforms bring to publishers, and the costs to platforms of hosting publisher content – this ensures that negotiations would be fair and reasonable. As the CMA and Ofcom note, this means that, in theory, payments could be made to platforms from publishers.[31]

6.7. This nullifies claims in Meta's NERA report that the CMA and Ofcom have recommended "the introduction of regulation before assessing whether the current outcomes are unfair", but the regulator's advice to DCMS was "insufficient" to establish this.[32] This is incorrect. It is the requirement to negotiate on fair and reasonable terms that would establish if the current outcomes are unfair; no pre-judgement as to the value of news content to platforms, or vice versa, has been made.

6.8. It is notable that the NERA report is authored by David Matthew, who until September 2022 was Ofcom's Head of Economics, a position he held when the regulator's advice was provided to DCMS in November 2021.[33] It appears Matthew was not sufficiently convinced of his arguments to voice opposition to the proposals at the time.

[30] UK Government, 'Final offer mechanism: policy summery briefing', April 2023
[31] Competition and Markets Authority and Ofcom, 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022
[32] NERA Economic Consulting, 'Meta and the News: Assessing the Value of the Bargain', March 2023
[33] NERA Economic Consulting, 'David Matthew, Managing Director', accessed 1st June 2023

6.9. That no prior judgement has or will be made is significant, as a key platform argument made against a requirement to negotiate is that platforms are worth far more to publishers than vice versa. They argue that news is a miniscule, maybe even dispensable element of their business. This begs the question: If Google and Facebook are certain this is case, then why not come to the table?

7. Dispelling myths and misrepresentations around the DMCCB

7.1. ***Not a silver bullet***

7.1.1. As set out above, a CR for platforms to trade on fair and reasonable terms with news publishers aims to ensure that platforms are brought to the table to negotiate for the value that news content brings to platforms. Following the Tinbergen Rule of public policy – that a single policy objective requires at least one corresponding policy – it focuses on the policy objective for which it is designed. [34]

7.1.2. Other DMU CRs have different policy objectives and would aid publishers in other ways, for example ensuring that publishers receive a fair portion of the money that advertisers spend on ads shown on their websites. Platforms may also be ordered to give publishers fair warning and proper explanation of complex algorithm changes, as well as sharing the data of users that interact with a publishers' news content within a platform ecosystem. This would further aid publisher sustainability.

7.1.3. A key criticism of a requirement for platforms to compensate publishers is that the internet's impact on publisher business models is multi-faceted and not centred on platforms and will require a range of different remedies.[35] For example, publishers have lost significant levels of classified advertising to smaller niche platforms (such as dating apps replacing personal classifieds), and face competition from thousands of online content providers when marketing their advertising inventory.

7.1.4. It is correct that a sustainable future for news publishing requires a range of publisher initiatives and other, focused government policies: A single DMU CR does not represent a silver bullet that would 'save journalism'.

7.1.5. To criticise a policy aimed at removing a market imbalance for failing to remedy a myriad of other issues misses the point entirely, ignoring the need for targeted policy remedies for specific policy issues. The government-commissioned Cairncross Review made nine key recommendations to sustain journalism, only one of which was 'codes of conduct' to govern commercial relationships between platforms and publishers (with one other focused on fair competition in the digital advertising market).[36]

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[34] Jan Tinbergen, 'On the Theory of Economic Policy', 1952

[35] Institute of Economic Affairs, 'Breaking The News? Should digital platforms be required to fund news publishers?', February 2023

[36] Frances Cairncross, 'The Cairncross Review: A Sustainable Future For Journalism', February 2019

7.2. *Uncreative destruction*

7.2.1. Opponents of payment for news content have claimed that the emergence of new technologies that have impacted publishers is an example of what Joseph Schumpeter called 'creative destruction'. [37] It argued that 'Google and Meta did not take publishers' money any more than Henry Ford stole from the horse and carriage industry'.[38]

7.2.2. Platforms may have created an efficient advertising model, but they have not created any public interest journalism; instead, they threaten its production because they benefit greatly from publishers' output without having paid for it. The broad range of 'hard news', political coverage, business news, and specialist content focused local areas, sport, law, and myriad other topics produced by large and small publishers is essential to platforms' ability to target and ultimately monetise users. Henry Ford did not depend on horses to monetise his motor cars in the way that platforms need publishers' content to monetise their platforms.

7.3. *The 'link tax' myth*

7.3.1. The term 'link tax' is often used to dismiss payment for news content as being unreasonable, claiming it would risk breaking the internet. However, platforms would not be forced to pay for 'links' or 'per click' and there is no such reference in the legislation.

7.3.2. In fact, the CMA and Ofcom have stated that negotiations would be based on the value of copyrighted content as it is fair and reasonable for publishers to receive compensation for content over which they have a property right.[39] Hyperlinks alone are not covered by UK copyright law; it is the use of headlines, snippets, images, pictures, longer extracts or whole extracts that are so valuable to platforms that would be the subject of negotiations.

7.3.3. Some contend that even this is unnecessary, as publishers would have long since bought legal claims if they believed that platforms were exploiting copyrighted content. This ignores the imbalance of market power set out above; publishers rely on platforms to reach users so could never credibly threaten to remove their content, meaning that fair negotiations are impossible at present.

7.3.4. The 'link tax' argument also implies that platforms play a role akin to companies that provide phone lines, with no influence over the publisher-consumer relationship. Yet platforms' algorithms determine what content is surfaced, how it is presented, and in what ecosystem users consume it. They have positioned themselves firmly between publishers and users, and profit disproportionately from this market power.

7.3.5. It is also argued that if platforms are compelled to 'pay for links' (which is itself an untrue characterisation) then the logic may not be limited to news. This is misleading. The UK government recognises journalism as a classic public good, with even those who do not

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[37] Joseph Schumpeter, Capitalism, Socialism, and Democracy', 1942

[38] Institute of Economic Affairs, 'Breaking The News? Should digital platforms be required to fund news publishers?', February 2023

[39] Competition and Markets Authority and Ofcom, 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022

directly interact with news content benefiting from the role it plays in holding the powerful to account and stimulating public discourse. Google would never be compelled to negotiate for the value of an online retailer website, or a gambling website to its search engine. Indeed, there are many technical market failures that will never be addressed, and do not need to be tackled. The centrality of journalism to democracy means that this imbalance should be prioritised.

7.4. ***The impact on online news content***

7.4.1. The Institute of Economic Affairs (the "**IEA**") have argued that linking publisher revenues directly to social media shareability could incentivise publishers to create clickbait.[40] There is no evidence that this has occurred following payments made in Australia, and in any case, payments would not be made on a 'per click' basis. In fact, it can be argued that supporting publisher sustainability with fair payments for the value of content would mitigate any short-term pressures to create clickbait material, allowing publishers to increase long-term investments in public interest reporting.

7.4.2. It should also be made clear that the DMU would not allow producers of harmful content to benefit: Ofcom and the CMA have already made clear that a CR to trade on fair and reasonable terms would not contain an obligation to renumerate harmful content, and guidance provided to platforms would make this clear.[41]

7.4.3. The IEA also posit that a requirement to negotiate for the value of content could encourage platforms to reduce or remove news content to avoid payment liability, as has occurred in Australia and Canada in a frantic attempt to ward off regulation.[42] Denying citizens access to reliable information as a lobbying technique to avoid payment serves only to emphasise: (i) their market dominance; and (ii) the primacy that these firms place on profits rather than citizens' interests. There is an urgent need for legislation to reign in their ability to harm UK businesses and consumers through irresponsible exercise of their market power. The government should not give in to similar threats in the UK.

7.4.4. Following the introduction of the Australian News Media Bargaining Code, there is evidence that the volume of domestic publishers' international news content decreased on Google News, whilst the volume of foreign publishers' content increased.[43] This demonstrates that, even after regulation aimed at bringing platforms to the table has been passed, their market dominance allows them to substitute away to less expensive content. It is only consumer demand and the availability of substitutes (international

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[40] Institute of Economic Affairs, 'Breaking The News? Should digital platforms be required to fund news publishers?', February 2023
[41] Competition and Markets Authority and Ofcom, 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022
[42] Institute of Economic Affairs, 'Breaking The News? Should digital platforms be required to fund news publishers?', February 2023
[43] Marita Freimane, 'Substituting Away? The Effect of Platform Bargaining Regulation on Content Display', May 2022

content being easier to substitute than domestic Australian content) that constrains Google's ability to do so.[44]

7.4.5. Whilst the DMU would need to balance an SMS firm's freedom to contract and manage its business with the need to tackle anti-competitive conduct, the permitted list of CRs available to the regulator would allow it to prevent such discriminatory behaviour under the 'fair dealing' objective. Whilst the value of trusted information to their platforms, and society, should be clear to platforms, the regulator should stand ready to prevent the anti-competitive withdrawal of UK news content in efforts to avoid fair negotiation.

7.4.6. Concerns have also been raised that platforms may remove 'snippets', diminishing the user experience. However, it can be expected that the market would adapt and if users valued snippets, it would be in the interests of platforms to continue to offer them and negotiate for the value with publishers.

7.5. ***Innovation and competition***

7.5.1. Some have argued that platform 'subsidy' could reduce the incentive for publishers to innovate, particularly as it could advantage large publishers, with smaller publishers finding it hard to negotiate, and that in Australia it is larger platforms that have been able to negotiate the best deals.[45]

7.5.2. This argument is misguided in the extreme: Publishers already license their copyright content for the value that it brings to companies who republish their content or media monitoring services such as Lexis Nexis and Factiva (which pay 25 per cent and upwards royalties to news publishers). It would be plainly ridiculous for these organisations (that lack the market power to avoid fair negotiations) to claim that they should avoid fair payment because it may disincentivise the publisher exploring other sources of renumeration.

7.5.3. In the face of global efforts to ensure that they negotiate fair terms for the value of content, Google and Meta have already signed some deals to license UK news publishers' content (it should be made clear these deals all fall short of a fair licensing agreement).[46] A report by Economic Insight estimated that in 2018 newspapers received around £100 million from deals with aggregators, far below the estimated £1 billion in value that publishers bring to platforms.[47] If platforms have credible concerns about the impact on publishers' businesses, then why make payments (if not to ward off regulation)?

7.5.4. As to the concern that DMU regulation would advantage larger publishers by picking winners and losers, this is precisely what Google and Meta's existing deals run the risk of doing. In contrast, the DMU would ensure both large and small publishers negotiate on a

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[44] Marita Freimane, 'Substituting Away? The Effect of Platform Bargaining Regulation on Content Display', May 2022

[45] Institute of Economic Affairs, 'Breaking The News? Should digital platforms be required to fund news publishers?', February 2023

[46] Press Gazette, 'Why a fair licensing deal would see Google and Facebook pay news industry $2bn+ a year', March 2021

[47] DCMS/Economic Insight, 'Press Sector Financial Sustainability', May 2021

level playing field, both in relation to the platforms, and with each other. Collective bargaining would be permitted (within the bounds of competition law), and the DMU would facilitate the exchange of information between parties as part of the FOM, ensuring smaller publishers can negotiate with adequate information to make reasonable bids.

7.5.5. Naturally, larger publishers that produce content that is relevant to a wider audience, would be able to negotiate deals of a higher monetary value than a small publisher, but there is no reason to suppose that these deals would have a higher relative value than a deal made with a small publisher. It should be noted that all eligible publishers, large and small, have been able to negotiate deals with Google in Australia.[48] In fact, it is estimated that the Australian Code has forced Google and Meta to reach deals with publishers that employ over 90 per cent of Australian journalists.[49]

7.5.6. Rod Sims, former chair of the Australian Competition & Consumer Commission and architect of the Australian News Media Bargaining Code, has stated that the claims that it is only the big companies that have secured deals are 'factually false', adding that 'some of the smaller players are being paid 'a little bit more per journalist than the big players'.[50] Indeed, as Sims notes: 'Government policies that achieve well over 90 per cent of their objective are usually hailed as an outstanding success.'[51]

7.5.7. Also, for those smaller publishers that have not been compensated in Australia, this is either due to eligibility requirements in the Australian Code (which would not be replicated in the DMCCB) or the nature of the Code which means that platforms are not designated if they make a substantial contribution to the sustainability of news in Australia (this would not be replicated either).

7.5.8. Other DMCCB CRs would also safeguard against larger publishers being advantaged over smaller publishers. CRs available to the regulator would allow it to prevent such discriminatory behaviour under the 'fair dealing' objective. It is clear that small publishers would benefit from the DMCCB, and the existence of the DMU CRs may even encourage new digital entrants as they can be assured of fair compensation from platforms.

7.6. ***Media influence***

7.6.1. There have been claims that the introduction of a requirement to trade on fair and reasonable terms threatens to bring regulators and politicians too close to the control of media and thereby leading to the distortion of media output, and that the introduction of such regulation is not covered in an uncritical manner.[52]

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[48] Poynter, 'Australia's news media bargaining code pries $140 million from Google and Facebook', August 2022

[49] Judith Neilson Institute, Rod Sims 'Instruments and objectives; explaining the News Media Bargaining Code', June 2022

[50] Press Gazette, ''Oh, yeah. It's a big deal': Meet the man who forced Google and Meta to start paying for news', February 2022

[51] Judith Neilson Institute, Rod Sims 'Instruments and objectives; explaining the News Media Bargaining Code', June 2022

[52] Institute of Economic Affairs, 'Breaking The News? Should digital platforms be required to fund news publishers?', February 2023

7.6.2. Yet, if followed to its logical conclusion, then one would argue that the government should never introduce policies to support media sustainability. Given the substantial public good created by public interest journalism – that holds the government itself to account - this is not a credible position. Furthermore, this regulation serves only to ensure that publishers can negotiate with platforms for the fair market value of news content. It is not a government subsidy, direct or indirect.

7.6.3. Furthermore, UK publishers which stand to benefit from the DMCCB have published multiple comment pieces voicing opposition to the legislation (see The Times and The Daily Telegraph). Many publishers have also carried Google advertising which aims to push back against the Bill. In contrast, Google saw fit to use its Search platform (far greater than any single publisher) to oppose the Australian Code, and with no attempt at balance.[53]

7.7. ***Existing support for news publishers***

7.7.1. Platforms already have commercial deals with a limited number of UK publishers to license the use of news content. However, these deals generally only cover Google News Showcase and Facebook News Tab, representing only a miniscule proportion of the news content surfaced on Google and Facebook, and publishers contend that the value of these deals is extremely low.[54] It is estimated that Google's budget for deals in Australia (the only country to have passed legislation compelling platforms to negotiate) is three times greater than its budget for the UK, despite the UK economy being double that of Australia.[55] These deals are also subject to the caprice of the platforms, with Meta beginning to end payments to US publishers.[56]

7.7.2. This translates into paltry deals for UK news publishers: local publisher National World stated that it receives £1.2 million from current licensing deals with Google and Meta.[57] If the publisher were able to negotiate a deal worth around 20 to 30 per cent of its journalism costs – the estimated value of deals made in Australia following the introduction of the News Media Bargaining Code – its deals with Google and Meta would be worth between £5 million and £8 million.[58] [59]

7.7.3. This lack of legislation in the UK has allowed platforms to continue to abuse their market dominance by paying insufficient sums with 'take it or leave it' terms to struggling publishers, whilst also picking winners and losers. This is particularly relevant for smaller

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[53] The Verge, 'Google lobbies Australian users against plans to make it pay for news', August 2020
[54] Press Gazette, 'Why a fair licensing deal would see Google and Facebook pay news industry $2bn+ a year', March 2021
[55] Press Gazette, 'Google News Showcase: Publishers break silence over secret deals behind $1bn scheme', September 2021
[56] Axios, 'Scoop: Meta officially cuts funding for U.S. news publishers', July 2022
[57] Press Gazette, 'National World CEO David Montgomery sets sights on The Independent and says £1.2m a year from Duopoly 'not enough'', June 2021
[58] Press Gazette, 'Australia-style regulation could land UK news giants £10m+ annually from Google and Facebook', June 2022
[59] This is intended as a comparison with a country that has introduced DMU-style regulation - payments negotiated under the DMCCB may well be much higher, and will likely not be negotiated based on journalism costs.

local publishers. In contrast, all eligible news publishers have made deals with Google in Australia.[60]

7.7.4. Platforms also partner with publishers in other ways, such as the Google News Initiative and Meta Community News Project, providing financial support for news organisations.[61] Yet much of this funding comes in the form of one-off grants for specific projects, rather than bolstering the long-term sustainability of the sector. There is no guarantee such programmes will continue: Reports in the US have stated that Meta's Journalism Project Global Accelerator programme is being wound down, with key managers laid off.[62]

7.7.5. In any case, the £5.9 million over two years that Meta announced it would invest in 2021, and the £14 million that Google has invested up to now under their respective programmes, pales in significance against the value of news content to their platforms (as well as leaving Google and Meta in the position to pick 'winners and losers').

7.8. *Finding the value*

7.8.1. The DMCCB does not seek to pre-determine that platforms owe publishers money, or the value of any deal. Indeed, it is not anticipated that the deals reached under the CRs would be unduly large: Ofcom and the CMA have stated: 'We expect that the direct financial gains to news publishers from a code would be a relatively small percentage of their existing advertising revenues.'[63]

7.8.2. Negotiations would account for the benefits that platforms bring to publishers, and the costs to platforms of hosting publisher content – this ensures that negotiations would be fair and reasonable. This means that payments could be made to platforms from publishers if it found that platforms provide greater value to publishers than vice versa, and this has been acknowledged by the CMA.[64]

7.8.3. Ultimately, if platforms are truly convinced that news publishers provide them with little value, it would make commercial sense for them to welcome DMU regulation and reap the benefits of negotiation.

8. Conclusion

8.1. UK publishers have had to operate in completely unjust circumstances in which they are forced to accept unfair and unequal payment terms from the tech platforms. It is time for this to end.

[60] Poynter, 'Australia's news media bargaining code pries $140 million from Google and Facebook', August 2022

[61] Digital, Culture, Media, and Sport Committee, 'Sustainability of local journalism, Seventh Report of Session 2022-23', January 2023

[62] NeimenLab, 'Meta's layoffs make it official: Facebook is ready to part ways with the news', November 2022

[63] Competition and Markets Authority and Ofcom, 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022

[64] Competition and Markets Authority and Ofcom, 'Advice to DCMS on how a code of conduct should apply to platforms and content providers', May 2022

8.2. The DMCCB will provide a necessary framework to ensure online platforms such as Google and Facebook make fair and reasonable payment for use of news publishers' news content. This is a key opportunity to correct the scales and deliver fair reward for news publishers, paving the way for a truly sustainable future for high quality journalism.

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