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Media Release
18 February 2019

Free TV Calls for ACCC Oversight on Digital Titans

Free TV Australia today called on the Australian Competition and Consumer Commission (ACCC) to develop a new access and undertaking framework to regulate digital titans that have substantial market power.

Commenting on Free TV's response to the ACCC's Digital Platforms Inquiry Preliminary Report, CEO Bridget Fair said: "In the rest of the economy, if a monopoly provides an essential service we regulate the terms and conditions of access. It's time to apply the same thinking to digital monopolies.

"What the ACCC Preliminary Report tells us is that Google and Facebook have substantial market power and are unavoidable business partners for Australian companies of all kinds, including the media. We are asking the ACCC to take the logical next step and develop a new regulatory system that will have immediate impact and support the ongoing production of news and Australian content.

"As is already the case for infrastructure and telecommunications, under our proposal once market power and revenue thresholds are met, the ACCC would have the power to set the terms and conditions of access to the digital platform. This would include ensuring that the digital platform did not favour its own business and that prices for advertising services are transparent."

Free TV's proposed model would give the ACCC the power to arbitrate when media companies and Google or Facebook cannot agree on a fair payment for the use of content.

Ms Fair said: "The ACCC's report is also very clear on the importance of Australian news content to the digital platforms. But not only is it important to them, it's crucial to our democracy that local media businesses can keep investing in the full range of premium Australian content.

"That's why we also welcome the additional financial support measures discussed in the ACCC's Preliminary Report. In particular, we are calling on the Government to immediately adopt a tax offset for expenditure related to the production of journalistic content, such as has been recently announced in Canada.

"The ACCC has also belled the cat on the regulatory disparity between media companies and the digital platforms. While we would be a willing participant in yet another review process, as recommended by the ACCC, there are a number of areas where the case for reform is obvious.

"You don't need another review to tell you that an election blackout period, which doesn't apply online, no longer makes sense. Or that outdated Australian content rules from the 1980's are well overdue for change.

"There are some areas of reform where the work has already been done and all that is missing is the resolve to make the necessary changes. The ACCC should lead the way in these areas with clear recommendations for substantive change," Ms Fair said.

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Free TV's full range of recommendations in its response to the ACCC's Preliminary Report are:

A new approach to regulation

- A new access regime, administered by the ACCC, should be created under the *Competition and Consumer Act 2010* to regulate digital platform providers who have a substantial degree of market power in the programmatic advertising market.
- The access regime should require the provision of a transparent platform for the trading of programmatic advertising, with clear pricing ensuring that the platforms do not favour their own businesses in the supply chain.
- The access regime should also give Australian media companies control over how their content is monetised on the digital platforms by ensuring that they set the price of advertising around their content and how that advertising is displayed.
- The ACCC should be given the power to act as the arbitral body if platform owners (including news aggregators) and content creators are unable to agree reasonable commercial terms for the licensing of content, including snippets.
- The access regime should mandate the use of software development kits in advertising products to allow genuine third-party measurement and verification of reach claims.

Principles-based approach to regulating algorithm outputs

- ACMA should administer a Search and Social Code of Practice that establishes the principles that the digital platforms must abide by in writing their algorithms.
- ACMA would register the Code only when satisfied that it met pre-defined principles including that rankings must be fair and impartial, and not discriminate against content that attracts a payment for its use.
- News from Australian journalistic sources that meet a legislatively determined accreditation process should be clearly identified in search results and newsfeeds.

Support through other financial measures

- A news production tax offset should be introduced to support the production of Australian news and journalistic content.
- Other financial measures should also be supported such as tax deductibility for personal subscriptions and expanding the Regional and Small Publishers Fund.

Take meaningful action to address regulatory disparity

- Action should be taken immediately to address the most obvious cases of regulatory disparity, including election blackout periods and outdated children's content quotas.

An efficient and effective process for taking down illegal material

- Subject to meeting minimum requirements, a Mandatory Standard should be introduced to enable effective and timely take-down of copyright-infringing content, supported by a strong enforcement regime and clearer authorisation infringement provisions.
- The standard should require the proactive identification of illegal material, a quick and effective process for removing content and a process of remuneration for rights holders.

Transparency and control the key to data and privacy

- The digital platforms should be required to be transparent in their data collection practices to enable consumers to provide their informed consent.
- With an effective informed consent regime, the existing provisions of the Privacy Act are sufficient and additional levels of regulation should not be required.